

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

PAUL LESLIE COX,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001211

APPENDIX

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SOLICITOR BOWDEN: If it please the Court, Your Honor.

I have 1987 indictment number 643, which charges Paul Leslie Cox with kidnapping and aggravated assault and battery.

Your Honor, Mr. Cox is present in Court today. He is not represented by an attorney.

He tells me does not want an attorney. And through negotiating with him, he has told me that he wishes to plead guilty to kidnapping in return for all other charges against him have been dropped.

THE COURT: All right, sir. Are you -- were you on bond and came up here?

DEFENDANT COX: Yes, sir.

THE COURT: You been in jail. How long you been in jail?

DEFENDANT COX: I went in front of you February in Laurens.

THE COURT: For what?

DEFENDANT COX: For stolen vehicle. I got ten years concurrent.

THE COURT: Concurrent with the time you were already serving?

DEFENDANT COX: Yes, sir.

1 THE COURT: And how much time were you serving?

2 DEFENDANT COX: Fourteen.

3 THE COURT: You serving fourteen now?

4 DEFENDANT COX: Yes, sir.

5 THE COURT: How much more time -- how long you been in
6 jail now on that first sentence?

7 DEFENDANT COX: Since June the 16, '83.

8 SOLICITOR BOWDEN: Your Honor, the State would
9 recommend that this sentence be back dated to that date.

10 THE COURT: All right. Kidnapping, he can get life,
11 can't he?

12 DEFENDANT COX: It's mandatory.

13 THE COURT: Let me see that statute. Is

14 DEFENDANT COX: I think---

15 THE COURT: Wait a minute, and let me see now.

16 DEFENDANT COX: 16-3-910.

17 MR. SANDERS: Life is mandatory.

18 DEFENDANT COX: It's mandatory life.

19 THE COURT: He's gone plead guilty do kidnapping?

20 SOLICITOR BOWDEN: That's what he tells me, Your
21 Honor.

22 THE COURT: No, sir, I want to appoint a Public
23 Defender. I want somebody to talk to you.

24 DEFENDANT COX: I refuse the Public Defender. I know
25 what I'm doing. I plead guilty on my own free will. I

1 would deny a Public Defender. I will deny being represented
2 by any kind of counsel.

3 THE COURT: All right, sir. I'll -- let me
4 investigate it a little bit.

5 All right. You're Mr. Paul Leslie Cox?

6 DEFENDANT COX: Yes, sir.

7 THE COURT: Mr. Cox, the solicitor tells me you want
8 to plead guilty to kidnapping?

9 DEFENDANT COX: Yes, sir.

10 THE COURT: You charged with kidnapping, assault and
11 battery of high and aggravated nature?

12 DEFENDANT COX: Yes, sir.

13 THE COURT: In return for the plea of kidnapping, the
14 solicitor will drop the other charges, assault and battery
15 of high and aggravated nature?

16 DEFENDANT COX: Yes, sir, and there's more charges.

17 SOLICITOR BOWDEN: There's other charges, Your Honor.

18 DEFENDANT COX: There's five more charges.

19 THE COURT: All right. Five more charges.

20 DEFENDANT COX: Yes, sir.

21 THE COURT: All in the same incident?

22 DEFENDANT COX: Yes, sir.

23 SOLICITOR BOWDEN: Yes, sir, Your Honor.

24 THE COURT: All right.

25 SOLICITOR BOWDEN: The facts, we'll present all that

1 when ever you like.

2 THE COURT: All right. I'll listen to that in just a
3 minute.

4 SOLICITOR BOWDEN: Yes, sir.

5 THE COURT: You understand if you can't afford one,
6 I'll give you a Public Defender?

7 DEFENDANT COX: Yes, sir, I understand that. I
8 represent myself.

9 THE COURT: You tell me that you do not want a Public
10 Defender?

11 DEFENDANT COX: I represent myself. I do not wish to
12 have counsel present at no time.

13 THE COURT: All right, sir. Now, you understand you
14 have a right to a jury trial?

15 DEFENDANT COX: Yes, sir, I understand that.

16 THE COURT: You understand that at that time even
17 without an attorney, you could cross-examine the State's
18 witnesses?

19 DEFENDANT COX: Yes, sir, I understand.

20 THE COURT: Put up your own witnesses?

21 DEFENDANT COX: Yes, sir, I understand.

22 THE COURT: And the State would have to prove you
23 guilty beyond a reasonable doubt. You know that?

24 DEFENDANT COX: Yes, sir.

25 THE COURT: And you wanted a jury trial and didn't.

1 want to testify or put up any evidence whatsoever---

2 DEFENDANT COX: I know I don't want one.

3 THE COURT: ---It could not be held against you. Do
4 you understand that, sir?

5 DEFENDANT COX: Yes, sir.

6 THE COURT: All right. Listen carefully now to me.
7 Are you now using any alcohol or drugs today?

8 DEFENDANT COX: No, sir.

9 THE COURT: Do you have any complaints against the
10 arresting officers or the Solicitor's Office or the
11 Sheriff's Office or anyone?

12 DEFENDANT COX: No, sir.

13 THE COURT: And you understand whatever I sentence you
14 to, you would always have a right to appeal to the South
15 Carolina Supreme Court?

16 DEFENDANT COX: Yes, sir.

17 THE COURT: Do you understand for kidnapping if I
18 accept your plea, I have no alternative but to sentence you
19 to life imprisonment?

20 DEFENDANT COX: Yes, sir, I understand that.

21 THE COURT: Now, are you pleading guilty freely and
22 voluntarily?

23 DEFENDANT COX: Yes, sir.

24 THE COURT: Are you guilty?

25 DEFENDANT COX: Yes, sir.

1 THE COURT: Let me hear the facts, Solicitor, before I
2 decide whether I'm gone accept this plea.

3 SOLICITOR BOWDEN: Your Honor, this incident occurred
4 on the 13th of January of this year. Mr. Cox was working on
5 a work detail from Northside Correctional Institute at the
6 South Carolina School for the Deaf and Blind. He was
7 washing the -- the van that had brought them over there,
8 which gave him access to the keys to the van.

9 He stole the van, and escaped. Your Honor, he -- he
10 took the van, was pursued buy officers, lost them, and when
11 one of the -- one of the police vehicles ran into another
12 police vehicle, he was able to escape at that point.

13 He abandoned the van later, and made his way to his
14 grandmother's house in Woodruff. At that time, Your Honor,
15 his grandmother had been advised that Mr. Cox had escaped,
16 and he may be headed her way.

17 He -- he went into her house. She thought that -- her
18 statement says that she thought that the screen door was
19 locked, and that she normally keeps the storm door locked.
20 However, this day it was not locked.

21 And when she opened the main door to the house, Paul
22 walked in on her. They sat and talked for a little while.
23 At that time, she says that something came over him. He
24 grabbed her. He took her into her bedroom where he -- where
25 he tied her up on the bed, and attempted to sexually assault

1 her.

2 At that time when he -- he did not complete that act,
3 Your Honor. There was no penetration. But he let -- left
4 her tied up, and he grabbed her purse, took what money she
5 had which amounted to some fifteen dollars, and her car
6 keys, stole her car, and left the scene.

7 Was later picked up by officers in that car. Your
8 Honor, I have spoken -- some months ago I talked to the
9 victim about this case. She was extremely upset.

10 THE COURT: It's his grandmother?

11 SOLICITOR BOWDEN: This is the grandmother and very
12 nervous. After we learned that Paul wanted to come up and
13 plead guilty, we attempted to get in touch with her today.
14 Your Honor, she is in Lexington, Kentucky at an unlisted
15 phone number.

16 I have spoken with Paul's mother. She tells me that
17 the last conversation she had with her mother about this
18 case was that -- was that -- she being a christian lady, had
19 forgiven Paul in her heart. Because she didn't think god
20 would give forgive her if she didn't forgive Paul.

21 But because of the serious nature of this case, Your
22 Honor, and even if the victim wanted to drop these charges,
23 the Solicitor's Office would not be willing to do so, and we
24 would proceed with whatever we had.

25 In turn -- return for this guilty plea, Your Honor, we

1 have dropped the escape charge, the aggravated assault
2 charge, and the grandmother at -- at an earlier time
3 instructed us to dismiss the grand larceny of an auto
4 charge.

5 THE COURT: Has he been to the State hospital to
6 determine whether or not----

7 DEFENDANT COX: I don't need to go to no State
8 Hospital. I know what the circumstances carry. I know what
9 your reading right there. 16-3 paragraph 910 of the Penal
10 Code of South Carolina. Carries automatic life.

11 If you're not gone accept my guilty plea for a life
12 sentence, then let me pull -- let me return and pull the
13 jury.

14 THE COURT: Just a minute. Was I polite to you in
15 Laurens?

16 DEFENDANT COX: Sir.

17 THE COURT: Was I -- I didn't mistreat you in Laurens,
18 did I?

19 DEFENDANT COX: No, sir, I'm not trying to disrespect
20 you.

21 THE COURT: That's all right.

22 DEFENDANT COX: Or treat you any way.

23 THE COURT: Just let me think a little bit.

24 SOLICITOR BOWDEN: Would you like to hear his record?

25 THE COURT: No, I'm -- I'm just looking at the

1 kidnapping statute. Are you saying that he tied up his
2 grandmother, is that correct?

3 SOLICITOR BOWDEN: Yes, sir, Your Honor.

4 THE COURT: Was that tied up at the time that he
5 attempted to have criminal sexual conduct with her?

6 SOLICITOR BOWDEN: Yes, sir.

7 DEFENDANT COX: They didn't put in the statement that
8 they took from her that I left the room. She goes and gets
9 all the stuff I need to tie her up with, brings it back, and
10 gives it to me. All this ain't in the statement. All this
11 is in the statement where her door wasn't was -- was locked,
12 her screen door.

13 She let me in willingly. We sat there and talked for
14 thirty or forty minutes. I never did go get nothing to tie
15 her up with. She went and got it on her own free will. I
16 left the room. Any time she wanted to make a phone call or
17 escape, she could of left. I left her by herself, peeked in
18 twenty minutes at a time.

19 THE COURT: Solicitor, did not the statute reads
20 whoever shall unlawfully seize, confine----

21 DEFENDANT COX: Confine.

22 THE COURT: ---Kidnap, to abduct or carry away. And
23 you are -- you are basing that on the confinement, the word
24 confined?

25 SOLICITOR BOWDEN: Yes, sir, Your Honor, that he

1 confined her to her house, would not let her leave, and---

2 THE COURT: He says---

3 SOLICITOR BOWDEN: ---And tied her up.

4 THE COURT: Did you have him up to the State Hospital?

5 SOLICITOR BOWDEN: No, sir, Your Honor.

6 DEFENDANT COX: And I do not wish to go. I been
7 through all this little State Hospital routine stuff before.
8 You go down there and you sit in a cell thirty, to sixty
9 days. They come back there, and they talk to you one time
10 and that's it.

11 What good does that do me? None. I don't need to
12 waste my time to go down there and start. If you -- if I
13 can go ahead and get you to sentence me, I can go ahead and
14 start on this.

15 THE COURT: But do you understand if I sentence you to
16 life---

17 DEFENDANT COX: I understand what life is.

18 THE COURT: You won't come up for parole until twenty
19 years. Do you know that?

20 DEFENDANT COX: Yes, sir, I understand that.

21 THE COURT: Mr. Sanders back here says it's ten years.

22 MR. SANDERS: Ten years on kidnapping.

23 DEFENDANT COX: It's ten years on kidnapping.

24 THE COURT: Kidnapping, come up for parole on ten
25 years of kidnapping.

1 MR. SANDERS: Eligibility be ten years.

2 DEFENDANT COX: They not giving parole. So you don't
3 have to worry about that.

4 THE COURT: Do you understand that? How far did you
5 go in school?

6 DEFENDANT COX: Tenth.

7 THE COURT: Tenth grade.

8 DEFENDANT COX: Yes, sir, I did.

9 THE COURT: Mr. Cox, do you feel it's because what you
10 did you ought to be punished by life in prison?

11 DEFENDANT COX: No, sir, I do not.

12 THE COURT: Well, do you think -- why -- why would you
13 not want somebody to help you? Not necessarily try the
14 case. But I'm not asking that the case be tried.

15 DEFENDANT COX: You got to look at it like if you
16 plead guilty, it's automatic life. If I have to put my
17 grandmother through it, come up here testifying, they gone
18 find me guilty. Automatic life.

19 So, why drag her through it again what she done been
20 through one time? Why keep putting her through the same
21 thing over and over? Let it go ahead and die here today.

22 THE COURT: What kind of work were you doing on the
23 time you serving now?

24 DEFENDANT COX: A sell reefer. That's the work I do.

25 THE COURT: You do what?

1 DEFENDANT COX: I sell reefer. That's the work I do
2 when I'm in the penitentiary.

3 THE COURT: Really.

4 DEFENDANT COX: Sell narcotics, pills, cocaine.
5 That's what I sell. I don't work. They don't pay enough
6 for me to work when I can make eight, and nine, ten, a
7 thousand dollars a week.

8 THE COURT: In the penitentiary?

9 DEFENDANT COX: Doing that. I done got work. When I
10 go get out, I have enough money to start.

11 THE COURT: And you do not want anyone to assist you?

12 DEFENDANT COX: No, sir, I do not want no counsel.

13 THE COURT: You wouldn't even talk to a -- a Public
14 Defender?

15 DEFENDANT COX: No, sir.

16 THE COURT: Not to change your mind or anything, and
17 not even to try the case.

18 DEFENDANT COX: Last Public Defender I talked to in
19 this Court, he promised me a one to six. I got the maximum
20 to plead guilty. I don't want no Public Defender.

21 THE COURT: I got some good ones here.

22 DEFENDANT COX: I don't -- I don't want one. I
23 understand what the law carries. I understand what's in
24 that book. I understand everything that you said to me so
25 far.

1 I understand that carries a life sentence. I've read
2 it. I know the codes. I attend law library down at Perry
3 and read. I go to school at Perry. I'm not dumb. I know
4 what it carries.

5 THE COURT: How old are you?

6 DEFENDANT COX: Thirty-one.

7 THE COURT: Thirty-one. And if you date it back to
8 '82, you be eligible for parole in '93, is that what you're
9 saying?

10 DEFENDANT COX: November of '93. Probably be '94
11 before I go up. But they ain't giving parole. They turned
12 me down in November of last year for fifty-eight dollars.
13 Why they want to give me parole for kidnapping? Turned me
14 down for fifty-eight, two checks, a twenty-eight dollar
15 check, and thirty dollars check for fourteen years.

16 Why they want to give me parole on a kidnapping
17 charge?

18 THE COURT: Well, but I -- I don't want to send you
19 off for kidnapping. I really would like very much for you
20 to talk to a an attorney. You let me do that?

21 DEFENDANT COX: I don't want to talk to no attorney.
22 I want to let things die here today now. I know that if you
23 sentence me, it will be sentenced to life. I know that. If
24 you'll just go ahead and carry out your job, then I can
25 start on mine.

1 THE COURT: Let me think about it tonight. You have
2 any objection?

3 DEFENDANT COX: Yes, sir.

4 THE COURT: All right. Let me think about it a little
5 bit. Come back here at 9:30 tomorrow morning. You have any
6 objection to that?

7 DEFENDANT COX: Yes, sir, I do not wish to stay up
8 here in Spartanburg County jail until in the morning.

9 THE COURT: Well, they not gone send you to Perry now
10 any way.

11 DEFENDANT COX: Yes, they got a van going as soon as I
12 get back. That's what they waiting on me to get back. I do
13 not wish to stay in Spartanburg another day.

14 THE COURT: Do you think that -- you won't take an
15 attorney?

16 DEFENDANT COX: No, sir.

17 THE COURT: Even if I give you an attorney wasn't a
18 Public Defender.

19 DEFENDANT COX: No, sir.

20 THE COURT: And you will not cooperate with the State
21 Hospital if I send you up there for examination, is that
22 what you're telling me?

23 DEFENDANT COX: No, sir I will not ccooperate with
24 none of the people down there. I would refuse to even go
25 down there.

1 THE COURT: Well, I could send you down there.

2 DEFENDANT COX: You could send me.

3 THE COURT: But If you wouldn't cooperate, it wouldn't
4 help me.

5 DEFENDANT COX: Every time, if I go to the State
6 Hospital, every time they open the door, I would jump on one
7 of these nurses or polices for you. If you go ahead and
8 sentence me today, and let's get it over with. I can't wait
9 until 9:30 or 9:00 o'clock in the morning.

10 THE COURT: All right. First, I accept the plea.

11 DEFENDANT COX: Yes, sir.

12 THE COURT: I think it is free and voluntary and
13 knowingly and intelligently waived his rights to a jury
14 trial, and the service of either the Public Defender or a
15 private attorney from the bar. I further find that he knows
16 what he's doing, that he's capable, if he wanted to, of
17 conducting a trial and assisting an attorney in his own
18 defense, and that he knowingly and intelligently waived
19 those.

20 All right, sir. Now, Mr. Cox, before, -- do you
21 understand when you say life that doesn't mean that you
22 necessarily gone get out in '93, November? They could keep
23 you there for life.

24 DEFENDANT COX: I'm not expecting to get out in '93.

25 THE COURT: Do you understand that you could get---

1 DEFENDANT COX: Yes, sir.

2 THE COURT: ---Be there for life?

3 DEFENDANT COX: I understand if I miss parole, I got
4 to wait two more years before I go up. And if it takes me
5 up to two years after that, or until I die.

6 THE COURT: All right.

7 DEFENDANT COX: I understand all that.

8 THE COURT: All right. Judgment of law and Sentence
9 of the Court that you, Paul Leslie Cox, be confined to the
10 South Carolina Department of Corrections for the balance of
11 your natural life.

12 DEFENDANT COX: Yes, sir.

13 THE COURT: Good luck.

14 DEFENDANT COX: Yes, sir. .

15 SOLICITOR BOWDEN: Thank you, Your Honor.

16 (Whereupon, the defendant was brought back in.)

17 THE COURT: All right. If you don't mind, give me
18 that indictment of Mr. Cox. I want to ask you a question or
19 two if you don't mind, Mr. Cox.

20 DEFENDANT COX: Yes, sir.

21 THE COURT: You read the statute pretty good. I
22 congratulate you. You're not a dummy by any stretch of the
23 imagination.

24 DEFENDANT COX: Yes, sir.

25 THE COURT: You can quote it better than I can if you

1 read it alot of times.

2 DEFENDANT COX: Yes, sir.

3 THE COURT: And you remember when I told you I read
4 the statute to you and I put the word confine in there.
5 That's the -- probably the only thing that really applies to
6 kidnapping. To seize, you always have to seize somebody
7 when you do anything, assault and battery or anything else.

8 So, I'm really interested in the confinement. After
9 you pled guilty, you told me you were guilty. Then you told
10 me that -- that the statement didn't contain the truth. And
11 I believe you said, and correct me if I'm wrong, you said
12 that y'all sit there and talked a long time.

13 DEFENDANT COX: Yes, sir.

14 THE COURT: That she could of left any time she wanted
15 to.

16 DEFENDANT COX: Yes, sir.

17 THE COURT: And that she went and got the ropes to tie
18 her up with. Well, if she -- if you tied her up at her
19 request, of course, that's not kidnapping. Why don't you
20 tell me, if you will, what occurred?

21 DEFENDANT COX: I been drinking. I parked the van
22 down behind moma's house, and I know the woods all, you
23 know, down in there good. I parked the van. I cut through
24 the woods, went and sat in the woods. Drunk some more
25 liquor. And it got dark.

1 I seen Northside van go up the street down towards
2 moma's house. When it went out the street towards mama's
3 house, I went up towards granny's house. Got up there and
4 knocked on the door. She opened the door. Unlocked the
5 screen door and let me in. She told me the police was
6 looking for me. I told her I knowed that.

7 I went over there and sat down in the chair at the far
8 end of the room over by the TV. She sat down near the door
9 where she got a chair at the door. Me and her sit there and
10 talked for about I guess twenty or thirty minutes. She
11 tried to talk me into calling my stepfather cause he's a --
12 I don't know what you call him, state constable, to get him
13 to let him come you know and take me back.

14 I went over to to the telephone. And me and her was
15 standing there looking up the number in the phone. And all
16 of sudden it hit me, I didn't want to go back. So, I put my
17 hand on her shoulder and told her to open the door and go in
18 here and sit down. She walks around and sits down.

19 I told her I need something to tie her up with. So
20 she gets up. I go in the living room, she goes over to the
21 dresser or somewhere. Cause I come back, she had the
22 scarves I reckon you know, and I went in the living room
23 and come back.

24 And she was sitting on the edge of the bed. Then, I
25 walked in the bathroom, come out of the the bathroom. I

1 asked her, I said, where is your pocketbook. How much money
2 you got. She told me she didn't have -- she had twelve
3 dollars. I went in the kitchen looking for the pocketbook
4 where she told me it was at.

5 She was still sitting on the bed not tied up. I go in
6 there and get the pocket book and bring it in there where
7 she's at and looked in it, and she told me where the money
8 was and I got the money.

9 Then I got ready to leave and she done got stuff to
10 tie up with. I got a little carried away, and then I tied
11 her up and left. And I told her when I tied her up, I said,
12 when I leave, I'll go to phone and call somebody to come and
13 get you, untie you. So, I went to the phone. When I
14 called, the line was busy.

15 Then I tried to call again. It was busy. Then I
16 found out the police done ben over there. Cause I guess the
17 lady next door keeps an eye on her real good. When the lady
18 heard me leaving in car, she probably went over there cause
19 she knows my grandmother does not drive at night cause she
20 can't see how to drive at night.

21 And then next thing I know I got a kidnapping warrant
22 on me for tying her up.

23 THE COURT: You left her there tied up I guess too?

24 DEFENDANT COX: Yes.

25 THE COURT: What did you think give alarm until you

1 got away?

2 DEFENDANT COX: Done been there threatening everybody
3 about if they helped me any kind of way. So, I tied her up.

4 THE COURT: All right. Thank you, sir. I appreciate
5 it.

6

7 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, the undersigned, Pamela C. Eargle, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Spartanburg County, on the 16th day of April, 1987.

I do further certify that I am neither kin, counsel nor interest to any party hereto.

October 31, 1988


Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3 THE STATE)
4)

5 -VS-)

TRANSCRIPT OF RECORD

6 Paul Leslie Cox,)

7 Defendant.)

8 August 3-4, 1987
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE WILLIAM B. TRAXLER, JR., Judge.

12 APPEARANCES:

13 ROBERT CHILDS, III, Assistant Solicitor
14 for the State of South Carolina.

15 ROBERT C. RAY
16 310 Mills Avenue
17 Greenville, S. C.
18 For the Defendant Cox.

19
20
21
22 V. LOUISE GRAY
23 Court Reporter
24
25

I N D E X

2	<u>WITNESSES:</u>	<u>DIRECT</u>	<u>REDIRECT</u>	<u>CROSS</u>	<u>RECROSS</u>
3	<u>For the State:</u> (In Camera)				
4	Charles Brock	4	7	12 18	13
5	Andrew L. Riley	20	27	30	
6	Thomas Millwood	30	34	37 68	69 70 (Court)
8	Joseph Counts	37	41	65 67	66
10	Ralph Gossett	48	51		
12	<u>For the Defendant:</u>				
13	Charles Minyard	59			
14	Paul L. Cox	70			

EXHIBITS

For Identification

19	State's Ex. No. 1 (Waiver of Rights)	4
20	" Ex. No. 2 (Statement)	13

I N D E X (Cont'd)

WITNESSES:DIRECTREDIRECTCROSSRE CROSSFor the State: (Before the Jury)

James R. Sewell	82	89	94	
Robin L. Inman	96	100		
Andrew L. Riley	102	112		
Tallulah Tipton	120	124		
Thomas Millwood	124	128	133	
Ralph Gossett	134	140	147	149
Charles Brock	150	155		
Floyd D. Peeks	161	175	185	

For the Defendant:

Ralph Gossett	188	191	194	
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E X H I B I T SEXHIBITS:FOR IDENT.IN EVIDENCEFor the State:

Ex. No. 1 (Shank)		85
Ex. No. 2 (Masking Tape)		85
Ex. No. 3 (Waiver Rights)		109
Ex. No. 4 (Pants)		111
Ex. No. 5 (Shorts)	126	161
Ex. No. 6 (Cap)	174	193

For the Defense:

Ex. No. 1 (Letter of Gossett)		190
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P R O C E E D I N G S

(The case against Paul Leslie Cox was called for trial.)

MR. RAY: Your Honor, we would waive arraignment.

We have filed a Motion to Suppress the statement that he gave in this particular case, and we would like to have a hearing on that motion at this time.

THE COURT: All right. Is the State ready to proceed on that motion?

MR. CHILDS: Yes, Your Honor.

I have a Motion to Amend the Possession of Contraband indictment. There is a scribner's error on the indictment. It cites 24-7-155 and it should cite 24-3-950.

THE COURT: Let me see the indictment.

(The indictment was handed the Court.)

THE COURT: What is the correct number?

MR. CHILDS: I've got a copy of the statute, 24-3-950. It's entitled Possession of Contraband in Prison. There is just a scribner's error on the section number, and I would move to amend it.

THE COURT: What is 24-7-155?

MR. CHILDS: There is no such statute.

THE COURT: Okay, the motion to amend is granted. Change the numbers.

Are you ready to proceed on the suppression motions, Mr. Childs?

1 MR. CHILDS: Yes, sir, Your Honor.

2 THE COURT: Call your first witness.

3 MR. CHILDS: We call Charles Brock to the stand,
4 please.

5 CHARLES BROCK

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 Q. (By Mr. Childs) Mr. Brock, where are you employed?

9 A. South Carolina Department of Corrections.

10 Q. Mr. Brock, did you have an occasion to read Mr. Cox
11 his rights on May 10, 1987?

12 A. I did.

13 (Waiver of Rights was marked
14 State's Ex. No. 1 for
Identification.)

15 Q. (Mr. Childs) I show you what's been marked State's
16 Exhibit No. 1, can you identify that piece of paper?

17 A. This is a copy of the rights that I read to this
18 witness by myself.

19 Q. And in this Waiver of Rights, would you read, please,
20 in the record what the Waiver of Rights says.

21 A. "Your Rights. Before we ask you any questions, you
22 must understand your rights. You have the right to remain
23 silent. Anything you say can be used against you in Court.
24 You have the right to talk to a lawyer for advice before we
25 ask you any questions, and to have him with you during

1 questioning. If you have no money to pay a lawyer's fee,
2 the Court will appoint one to represent you without cost, if
3 you wish. If you decide to answer questions now without a
4 lawyer present, you will still have the right to stop
5 answering at any time. You also have the right to stop
6 answering at any time until you talk to a lawyer."

7 "Waiver of Rights. I have read this statement of my
8 rights and I understand what my rights are. I am willing to
9 make a statement and answer questions. I do not want a
10 lawyer at this time. I understand and know what I am doing.
11 No promise or threats have been made to me and no pressure
12 or coercion of any kind has been used against me."

13 And it is signed Paul Cox, 75206, it is witnessed by
14 myself, Charles Brock and Andrew L. Riley. Time is 6.01
15 P.M. May 10, 1987.

16 Q. Did he read those rights, or did you read that to him,
17 or how did that occur? Did you read that?

18 A. I read them and gave him an opportunity to look at it
19 and made sure that he understood it.

20 Q. Did he appear to know and understand what he was
21 reading?

22 A. He appeared to understand. He had no questions.

23 Q. Was any force or threats used in order to get him to
24 sign that waiver of rights?

25 A. There was not.

1 Q. To your knowledge, was this waiver knowing and
2 intelligent, did he understand?

3 A. Yes. In fact, he approached me and wanted to talk to
4 me.

5 Q. And after that, did he give you a statement?

6 A. He gave me an oral statement which was later a written
7 statement.

8 Q. He gave you an oral statement and then he signed a
9 written statement?

10 A. That was a day or two later that he signed a written
11 statement, but initially, it was an oral statement.

12 Q. And he gave that right after you read him the Rights?

13 A. That's correct.

14 MR. CHILDS: That's all the questions I would have.

15 THE COURT: Mr. Childs, you may know something about
16 this case, and I'm certain you do. You haven't put anything
17 in the record of what circumstances this statement was
18 taken, was he in jail, out of jail, in custody, out of
19 custody. Are you going to put any of that in?

20 MR. CHILDS: My apologies, Your Honor.

21 Q. (Mr. Childs) Where was this statement taken at?

22 A. It was taken in the briefing room at Perry Correctional
23 Institution.

24 Q. Okay, is he an inmate there?

25 A. He is.

1 Q. Okay, was this statement following the assault which
2 we are here for a trial on?

3 A. It was.

4 Q. And was it that very same day that you took this
5 Waiver of Rights?

6 A. It was, approximately three hours later.

7 Q. And what briefing-- where was this briefing room
8 located at Perry Correctional?

9 A. It is located in the Administration Building of Perry,
10 which is adjacent to the living area of the inmates.

11 Q. Had he been formally charged with this assault?

12 A. At this time he had not.

13 MR. CHILDS: Your Honor, I believe that's all the
14 questions I would have of this witness.

15 THE COURT: Mr. Ray, do you have any questions?

16 MR. RAY: Yes, sir.

17 CROSS EXAMINATION

18 Q. (Mr. Ray) Officer Brock, you were present when the
19 statement was taken?

20 A. Beg your pardon?

21 Q. You were present when the statement was taken?

22 A. I was present when he gave me the oral statement.

23 Q. Was anybody else present?

24 A. yes, sir.

25 Q. Who else was present?

1 A. Chief Riley, Andrew L. Riley.

2 Q. And what is his capacity at Perry?

3 A. He is Chief Correctional Supervisor of the Maximum
4 Section.

5 Q. All right, now, if I understand this right, on May
6 10th at approximately three-thirty p.m., there was an
7 assault on an officer, Officer Peeks, I believe, by an
8 unidentified assailant, is that correct?

9 A. That's correct.

10 Q. And nobody knew who did it, is that correct?

11 A. At that particular time, that is correct.

12 Q. And so, you took this statement almost exactly three
13 hours later on May 10th from the person that is accused of
14 assaulting the officer, is that correct?

15 A. That is.

16 Q. And that is Mr. Paul Cox, who is seated here today, is
17 that correct?

18 A. That's correct.

19 Q. What led you to take a statement from Mr. Cox?

20 A. Mr. Cox did, he came up voluntarily and wanted to
21 speak with me in reference to the incident.

22 Q. When did he do that?

23 A. -Minutes before the Rights was read.

24 Q. So, that would be about six o'clock, is that correct,
25 six p.m.?

1 A. Somewhere in that neighborhood, I don't know the
2 approximate time. I know the time that is recorded on his
3 Waiver of Rights was six o'clock, so prior to that Mr. Cox
4 came up and he wanted to talk with me in reference to the
5 incident that had happened or the assault on the officer
6 that had happened on the yard.

7 Q. The conversation you had with Mr. Cox, then, you're
8 saying Mr. Cox initiated the conversation, is that correct?

9 A. That is correct.

10 Q. And you didn't initiate it?

11 A. That is correct.

12 Q. And was there any discussion about another inmate, Mr.
13 Abernathy, Leroy Abernathy?

14 A. There was a discussion about, I guess it was, three or
15 four other inmates. I don't recall it being any names
16 being given. We had locked up four inmates whose description
17 fitted that which the officer had told us had assaulted him.

18 Q. And who were those other four inmates you locked up?

19 A. Leroy Abernathy, Roger Johnson, Wesley Gerald.

20 Q. Who was the fourth one?

21 A. I'm not sure that there was a fourth one, I said three
22 or four. Those are the three that I remember.

23 Q. So, you've got Leroy Abernathy,--

24 A. Roger Johnson, Wesley Gerald, and I believe the other
25 inmate that was locked up in conjunction-- prior to this,

1 or he was about to be locked up, was William Cobb. But he
2 was about to be locked up prior to this incident happening.

3 Q. Was there some kind of compromise struck with you
4 and Mr. Cox concerning Leroy Abernathy?

5 A. No, there was not.

6 Q. There wasn't any mention of Mr. Abernathy?

7 A. No.

8 Q. You didn't make a promise to Mr. Cox about Mr.
9 Abernathy?

10 A. No, sir. What happened is that Mr. Cox approached me
11 and he asked me-- well, he told me he would tell me exactly
12 who had stabbed him and if that was verified--

13 Q. Had stabbed who-- the officer?

14 A. Officer Peeks.

15 Q. All right.

16 A. And he asked me if that was verified, would I be able
17 to free those people that I had had locked up, and I told
18 him yes, there would be no need to keep them if we could
19 verify who the perpetrator of the stabbing was.

20 Q. So, you did strike a compromise with Mr. Cox, is that
21 correct?

22 A. I don't know what nomenclature you want to put on it
23 but that's what happened.

24 Q. And then you released Mr. Abernathy, Mr. Johnson, Mr.
25 Gerald and Mr. Cobb, is that correct, back out on the yard?

1 A. They were released a day and a half to two days later.

2 Q. Did they stay released?

3 A. I think Leroy Abernathy and Roger Johnson were locked
4 back up, pending the investigation for some other charges
5 that may have been related to this case.

6 Q. But, in fact, there was an agreement reached with Mr.
7 Cox whereby these four gentlemen were released back to the
8 yard?

9 A. Only three was released, that was Roger Johnson,
10 Wesley Gerald and Leroy Abernathy.

11 Q. But they were released?

12 A. William Cobb was not one of the guys who was supposed
13 to have--

14 Q. What description did you have on Mr.-- Officer Peek's
15 assailant, what was that description? Do you remember?

16 A. White, had on a hat with some kind of emblem on it--
17 a cap with some kind of emblem on it, some type T-shirt.
18 I'm very vague there because I came in-- I came from home
19 and it was late and I didn't get all that information.

20 Q. What was there about a tattoo on somebody's arm, what
21 was that?

22 A. I don't recall anything about a tattoo.

23 Q. You don't recall Officer Peek's indicating that his
24 assailant had a tattoo on his arm?

25 A. I wasn't privy to that information at that particular

1 time, and if I was, I can't recall it. I was not at the
2 Center when this happened. I came from home, which had me
3 arriving there approximately quarter to four. There were a
4 lot of things going on and a lot of information being
5 disseminated to various people. The On-Call Duty Officer
6 for that particular day was Chief Riley. Every one was
7 called in , Chief and above.

8 Q. But it is established that Mr. Abernathy, Mr. Johnson,
9 Mr. Gerald, were locked up after the incident took place and
10 subsequent, or after the-- subsequent to the statement from
11 Mr. Cox, that those four gentlemen were released back to the
12 yard, is that correct?

13 A. They were released back, I think, on the 12th.

14 MR. RAY: That's all I have for right now.

15 MR. TRAXLER: Anything further, Mr. Childs?

16 MR. CHILDS: Yes, sir.

17 REDIRECT EXAMINATION

18 Q. (By Mr. Childs) Is this release of prisoners, was it
19 or was it not in exchange for his statement?

20 A. It was not.

21 Q. Okay, and this talk about the prisoners, did that have
22 anything to do with his agreement to give you-- with his
23 waiver of his rights?

24 A. It did not.

25 Q. And did you use any promise or force, or threat what-

1 soever, to get him to waive his rights?

2 A. I did not. The statement that he gave me was strictly
3 voluntary. He approached me and prior to taking any state-
4 ment from any inmate on something of this magnitude, we
5 always get a waiver of rights.

6 Q. Is this a copy of the Waiver of Rights he signed on
7 that day?

8 A. It is.

9 MR. CHILDS: I'd like to put it in evidence for the
10 suppression hearing only, Your Honor.

11 THE COURT: Just mark it for identification as an
12 exhibit.

13 (The Statement referred to was
14 marked State's Exhibit No. 2 for
identification.)

15 MR. RAY: I have one further questions.

16 RECROSS EXAMINATION

17 Q. (Mr. Ray) Officer Brock, did you talk to an Officer
18 Brown prior to taking the statement from Mr. Cox? Do you
19 know Officer Brown?

20 A. Yes, there are several Officers Brown.

21 Q. I believe he is the contraband investigator, do you
22 know him?

23 A. Yes, sir, I'm familiar with him.

24 Q. Do you remember what that conversation disclosed, what
25 was said in that conversation with Investigator Brown?

1 MR. CHILDS: I would object, Your Honor, that's
2 hearsay.

3 THE COURT: I don't know whether it is or not. Go
4 ahead.

5 Q. (Mr. Ray) Did that conversation directly lead to
6 the statement that Mr. Cox gave?

7 A. If I recall correctly, I think it may have been
8 Officer Brown who told me that there was an inmate out there
9 that wanted to see me. When I went to the area where the
10 inmate was it, it was Cox, I believe. But I'm not recalling
11 or I don't remember any conversation other than that with
12 Mr. Brown.

13 Q. But there was a conversation with Mr. Brown before the
14 statement was taken from Mr. Cox?

15 A. I can't even swear to that. I don't remember. It was
16 a busy day, it was a lot of things going on, a lot of people
17 going back and forth, but I don't recall that.

18 MR. RAY: That's all I have from this Officer, Your
19 Honor.

20 EXAMINATION BY THE COURT

21 Q. Officer Brock, tell me in your own words how it came
22 about that you read him his rights, how did you know to go
23 see him, how did you end up seeing him, where did it take
24 place, if you would go into details.

25 A. Okay, I arrived at the Center approximately three-forty-

1 five. I had been told prior to my coming that an officer
2 had been stabbed. The first thing I went down was to the
3 dorm where the inmates are housed, and where the officer was
4 lying at. As I approached the dorm, EMS was taking him from
5 the dorm and putting him in the vehicle about to depart the
6 Center. At that time we locked down the yard, the living
7 areas for the inmates, and we started to try to pull every-
8 thing together in terms to identify the people who had did
9 the stabbing or person. That went on for quite some time.

10 We had a description that was given to us from some
11 officers, which had been related to them from Officer Peeks.
12 That went on for sometime. Finally, some of the other
13 officials came in and we were going back and forth and
14 sharing information.

15 The people who lived in that particular dorm that
16 matched the description, and who was in the vicinity of
17 where the officer was stabbed, we locked up. They happened
18 to be Roger Johnson, Leroy Abernathy, and Wesley Gerald.
19 After that was accomplished, sometime later we opened the
20 yard back up so that information could filter back to us as
21 to whether or not we had the right people, or what-have-you.

22 When the yard was opened, an officer - and I don't
23 recall who that officer was-- came to me and said that he
24 had an inmate out there who wanted to see me who could
25 possibly tell me something about the stabbing of the officer.

1 At that time I came to see who the inmate was. The inmate
2 was Paul Cox. He told me that he wanted to tell me-- he
3 had some information, he did not want to see innocent people
4 get locked up and inconvenienced, and he would tell me who
5 it was if we would allow those inmates to be released once
6 we could get this information verified.

7 At that point I sought the advice of the Warden, who
8 concurred that if we could get some verification that whom-
9 ever it was that he was gonna tell me had perpetrated this
10 incident, that we would, in fact, release those inmates
11 because at that point there would be no need for them to be
12 locked up.

13 Shortly, after that I time, I think I went back to my
14 office, got this--

15 Q. Where was Mr. Cox at this time?

16 A. He was in the briefing room.

17 Q. Okay, go ahead.

18 A. He, myself, and Mr. Riley was in the briefing room.
19 I think I left Mr. Riley with Cox, I went and talked with
20 the Warden, got the form, and somewhere around that time,
21 maybe before I got the form, he said, "Well, I did it." And
22 I said, "Stop right there." And that's the time that I
23 went and got the form.

24 Q. Was that in response to any question you asked him?

25 A. No.

1 Q. He just volunteered that he did it?
2 A. Yes, sir.
3 Q. That was somewhat before you got the form?
4 A. Uh-huh.
5 Q. What did you tell him to do when he said that?
6 A. I told him to stop, that I had to read him his rights.
7 I went and got the form, came back, read him the form,
8 explained that to him. He had no questions. Had him to
9 sign it. I signed it and Mr. Riley signed it. And at that
10 time, after he had done that, I asked him to tell me about
11 the incident, how did it happen, and so on.
12 Q. Okay, he gave you an oral statement at that time?
13 A. He did.
14 Q. Was it reduced to writing at that time immediately.
15 A. No, sir, it wasn't.
16 Q. All right, if you would just tell me what he said
17 after you read him his rights.
18 A. Well, he explained to me the position that Officer
19 Peeks was sitting. He told me how he came up from behind
20 him out of his room and stabbed him, and then what he did
21 next was he went back to his room, changed hat and shirt,
22 and went out. He also went on to tell me that sometime
23 right after the stabbing, Officer Riley, Mr. Riley, had
24 summoned him and some other inmates up while Mr. Peeks was
25 lying there, and initially, Mr. Peeks told Mr. Riley that he

1 was the guy who had stabbed him, and then later on he told
2 him he was not.

3 Q. All right, when did all that take place?

4 A. This is what he related to me.

5 Q. Okay, he said he had told some one earlier that he had
6 done it? When he said that he said he did it and then said
7 he didn't do it, what time are you talking about when he
8 said these things?

9 A. We're talking about right after the statement was
10 taken at six o'clock.

11 Q. The oral statement?

12 A. Uh-huh. I'm relating to you what he told me.

13 Q. Right.

14 A. And at that time it was approximately six something.

15 Q. Okay, were you present when a written statement was
16 taken later on?

17 A. I was not.

18 THE COURT: Okay.

19 Mr. Childs, any further questions?

20 MR. CHILDS: Not of this witness, Your Honor.

21 THE COURT: Mr. Ray, any further questions?

22 MR. RAY: One further question.

23 FUR. RECROSS EXAMINATION

24 Q. (Mr. Ray) Is it true that at some point in talking to
25 Mr. Cox, Officer Brock, that Mr. Cox indicated that he did

1 not stab Officer Peeks?

2 A. At no point did he indicate that to me.

3 Q. Was there any discussion over the fact that he had
4 been taken in front of Officer Peeks and Officer Peeks did
5 not identify him as his assailant?

6 A. He told me that. He also told me that initially
7 Officer Peeks had identified him.

8 Q. Wonder if you have reversed it, that initially he had
9 not identified him, and subsequently, that he had identified
10 him, is that possible?

11 A. I guess anything is possible, but what he told me was
12 what I just stated to you.

13 Q. But Officer, doesn't it make sense-- I believe you
14 previously indicated that there were other people that had
15 been previously locked up, Mr. Johnson, Mr. Gerald, Mr.
16 Abernathy, and Mr. Cobb may or may not have been. Doesn't
17 it make sense that if Officer Peeks had identified Mr. Cox
18 as the assailant, that he would have been the one locked up?

19 A. All things being equal, that would have made sense,
20 but I think what led to-- initially, Mr. Cox was identified
21 and he got very loud and very adamant about it not being
22 him, and I think just to kinda quell the situation, they
23 moved him to the side and then they brought him back around.

24 Q. But he said it was not him?

25 A. The second time. Well, he was going into shock, I'm

1 sure. But, initially, he identified him.

2 Q. Did he identify some man that had a tattoo on his arm,
3 isn't that correct?

4 A. I don't know that. I know what he told me and that's
5 what I'm relating to you, "he" being Cox.

6 Q. "He" being Cox?

7 A. Uh-huh. I did not have an opportunity to talk to Mr.
8 Peek. All the information I was getting was being filtered
9 to me through the on-call duty person, Mr. Riley, and other
10 officers and supervisors that were on duty that day.

11 MR. RAY: Thank you.

12 THE COURT: Anything further from this witness?

13 MR. CHILDS: No, sir.

14 (The witness was excused.)

15 MR. CHILDS: The State would call Andrew L. Riley.

16 ANDREW L. RILEY

17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 Q. (By Mr. Childs) Mr. Riley, how are you employed?

20 A. Chief Supervisor, Max Security, Perry Correctional
21 Institution.

22 Q. What was your position back on May 10th of this year?

23 A. I was the On-Call Duty Officer for that particular
24 day.

25 Q. Okay, were you on call in the afternoon of that day?

1 A. Yes.

2 Q. Would you tell us what happened to Officer Peek's that
3 afternoon that you are aware of?

4 A. I received the message that came over the radio that
5 an officer was down in Q-1, and I responded to Q-1 to find
6 Officer Peek's laying in what we call "the rock," or open bay
7 area where there's tables where inmates play cards, and do
8 other different things. Mr. Peek's was laying on the floor
9 with what we would term a homemade shank sticking in his
10 right side. At that time Mr. Peek's-- I went back to the
11 Administration Building and brought the nurse down where she
12 attended to Mr. Peek's, and Mr. Peek's started giving informa-
13 tion as to a description of the person that had shanked him,
14 At this time I don't really remember the specifics, I know
15 it was dark hair, moustache, and other things that Mr. Peek's
16 was relating to. At that time we closed down that particular
17 side of the dorm where we, along with Officer Inman and two
18 other officers, went from cell to cell, looking for the
19 description of the person that Mr. Peek's had given us.

20 I don't remember exactly how many inmates we actually
21 pulled out of their cells down to the Rock where Mr. Peek's
22 was laying for him to identify, somewhere in the neighborhood
23 of seven or eight.

24 Q. Was it from the area he had indicated the assailant
25 went to?

1 A. Yes.

2 Q. That you drew these inmates out of?

3 A. In other words, Mr. Peeks had indicated, laying on the
4 Rock, if I'm correct, that it would be as you enter the dorm
5 to the left side of the dorm where he had indicated the
6 living area where the inmate had went, that he thought he
7 lived.

8 Q. Was Mr. Cox in that area?

9 A. Yes.

10 Q. What did you do with Mr. Cox?

11 A. Mr. Cox was not the first one, I don't believe. When I
12 pulled Mr. Cox up to the Rock for Mr. Peeks to look at, Mr.
13 Peeks raised up, looked at him and said, "That's him." And
14 Cox immediately, in a rude, loud tone of voice, said, "You
15 don't know what you're talking about," or something to that
16 effect. And Mr. Peeks did look up again and say, "Well,
17 that's not him." At that time Mr. Peeks-- I don't know
18 specifically how long he had been laying there on the Rock
19 but he was beginning to go into shock.

20 Cox was put back in his cell, which we continued to go
21 cell to cell, looking for the description of that person. At
22 that time EMS had come in-- well, EMS was there then and at
23 that time we put everybody back in their cells and our main
24 concern then was to get Mr. Peeks out of the dorm where the
25 EMS could attend to him, and take him to the hospital.

1 Q. Now, after that did you have the occasion to lock down
2 several prisoners in that general area?

3 A. In other words, at that time the whole institution was
4 locked down to where every inmate was locked in their cell
5 that they live in.

6 Q. Well, what's the reason for that?

7 A. The reason for that was mainly to-- in other words,
8 this is something of a serious nature and all of our yard
9 officers that patrol each individual dorm to ensure other
10 inmates are not assaulted, robbed, and other various things,
11 is to lock the institution down because our main concern --
12 well, we can pour more security in the area that is affected.

13 Q. All right, did y'all lock down the inmates we have
14 previously heard mentioned, Leo Abernathy, and several
15 other inmates in Paul Cox's area?

16 A. All right, during that time, other administrative
17 people had come from home, and they took care of that part
18 of it. I went about helping to lock down the remainder of
19 the institution because, from the very beginning, inmates
20 were very reluctant and sort of rebellious as to going into
21 their dorms to where they knew they was gonna be locked
22 down.

23 Q. This was a general lock-down of everybody?

24 A. Yes.

25 Q. Not just whoever Mr. Cox may have mentioned took off?

1 A. Beg your pardon?

2 Q. This was just a general lock-down of everybody, not
3 just the names that maybe Mr. Cox--

4 A. Yes, sir, and you're talking about, probably, six or
5 seven hundred inmates at that time.

6 Q. All right, and following that lockdown, what happened
7 after that?

8 A. I was still on the yard area, patrolling, to ensure
9 that there was no tension building from the incident and
10 still trying to pick up other information, and where I was
11 called by Chief Brock in the Briefing Room where he stated
12 that Inmate Cox wanted to make a statement. This is the
13 first that I was aware that Inmate Cox wanted to make a
14 statement.

15 Q. All right, were you present when he was read his
16 Rights?

17 A. Yes.

18 Q. I show you what's been marked State's Exhibit No. 1
19 for identification, could you identify that for us, please?

20 A. Yes.

21 Q. What is that?

22 A. This is a Waiver of Rights.

23 Q. Were you present when that was signed by Inmate Cox?

24 A. Yes.

25 Q. Explain to the Court what was read to him and how that

1 procedure-- how those rights were read to him?

2 A. Really, my purpose for being in the Briefing Room with
3 Chief Brock and Inmate Cox was to witness what was going on.
4 Mr. Brock did read Inmate Cox his rights and asked him did
5 he understand the rights, and gave him the opportunity-- at
6 first Cox said he didn't need him to read the Rights, that
7 he knew these Rights. And Chief Brock told him that he had
8 to read them anyway.

9 Q. All right.

10 A. And after Chief Brock read him his Rights, he handed
11 Inmate Cox this form and asked him if he wanted to read them
12 and Inmate Cox stated that he didn't.

13 Q. Did he look at the form, though?

14 A. Yes.

15 Q. What did he do after that?

16 A. After that, Chief Brock signed it, I signed it as a
17 witness, and Inmate Cox signed it.

18 Q. Okay, did Inmate Cox appear to know his rights at that
19 time?

20 A. Yes.

21 Q. Was he acting in a rational behaviour, did he seem to
22 understand what those rights were all about?

23 A. He was very calm.

24 Q. Okay, did you use any threats of force or coercion, or
25 promise him anything to waive his rights?

1 A. No, sir.

2 Q. And after he read the rights, did he talk to you?

3 A. Yes.

4 Q. What did he say?

5 A. I'm not aware of any type of deal or anything else,
6 at least it wasn't spoke in my presence, as far as signing
7 this form. Inmate Cox stated that he had stabbed the
8 officer, and, more or less, he wanted the ones that had been
9 locked up to be released because he was the one that did it.
10 Inmate Cox also went as far, and which I did state to Inmate
11 Cox, that I didn't think he had did it. And he stated to
12 me that he did, that he had carrying the shank-- I don't
13 remember whether he said two days or two weeks--- and I
14 asked him why did he do it and he stated he was just fed up
15 with the system and everything else. And he did go as far
16 as to say how he walked up behind him and that Officer Peek
17 was sitting at the table, and he had on a pair of blue jeans
18 where he pulled the inside of his pocket out and stated that
19 he had been toting the shank around so long that it had put
20 two holes on the inside of the blue jeans pants. And Mr.
21 Brock or myself never promised or threatened Inmate Cox in
22 any type of way to get him to say anything. All of this
23 information was purely oral and voluntarily.

24 Q. Okay, was this statement recorded?

25 A. No, sir.

1 Q. The statement that he gave you was not tape recorded?

2 A. Not to my knowledge.

3 Q. So, you're not aware whether or not a recording device
4 was there or not?

5 A. No, sir, I don't remember.

6 Q. Following that, was that the last contact you had with
7 Paul Cox after he gave you the statement?

8 A. On that particular day, yes.

9 MR. CHILDS: I believe that's all the questions I'll
10 have of this witness, Your Honor.

11 THE COURT: Mr. Ray.

12 CROSS EXAMINATION

13 Q. (By Mr. Ray) Officer Riley, how did the fact that
14 Mr. Cox wanted to give a statement come to your attention?

15 A. In other words, when Chief Brock summoned me to come
16 to the Briefing Room and informed me that Inmate Cox wanted
17 to give a statement and he needed me to be a witness.

18 Q. And was Officer Brown present, also?

19 A. There was only three people in the room, Cox, myself,
20 and Chief Brock.

21 Q. And you were aware of the agreement that Officer Brock
22 and Mr. Cox had that the inmates would be released if he
23 gave the statement?

24 A. I was not aware of no agreement.

25 Q. But there was, in fact, three or four inmates---

1 A. Nothing was ever said, "If you give this statement,
2 we'll release these inmates." It was purely voluntarily on
3 Inmate Cox's part.

4 Q. All right, were three or four people, Mr. Gerald, Mr.
5 Johnson, and Mr. Abernathy, and perhaps Mr. Cobb released
6 back out on the yard as a result of this statement?

7 A. That I can't answer because later on that day, I don't
8 know the specific time, Mr. Counts, the Investigator came
9 in, which everything was turned over to him, and on the day
10 of the incident from the time that Mr. Counts came in until
11 this day, everything has been handled by Mr. Counts, and if
12 the inmates was released because of any reason, I'm not
13 aware of it. I cannot say that they was released because of
14 any reason, I don't know.

15 Q. What are your duties at Perry?

16 A. Chief Supervisor of Maximum Security.

17 Q. So, you would be over those four inmates we're talking
18 about, Abernathy, Johnson, Gerald and Cobb?

19 A. Yes.

20 Q. And you would be aware of whether or not they were
21 being held or whether or not they would be out on the yard?

22 A. No, sir, my only responsibility is to house them until
23 such time as the appropriate officials deem them to be
24 transferred somewhere else.

25 Q. Who are the appropriate officials?

1 A. That would be Mr. Counts or the Warden in this
2 particular incident.

3 Q. All right, you were present when Mr. Cox gave the
4 statement on May 10th, is that correct?

5 A. Yes, the oral statement.

6 Q. You were present then?

7 A. Yes.

8 Q. All right, have you seen a copy of that, is that the
9 one that was--

10 A. That is an oral statement.

11 Q. All right, I believe it was given at six thirty-
12 five p.m. on May 10th, is that correct?

13 A. It is 6:01 here when it was signed, the waiver.

14 Q. The oral statement?

15 A. Right.

16 Q. That was the waiver for the oral statement?

17 A. Right.

18 Q. When was the written statement--

19 A. I don't know when the written statement was taken.

20 Q. You weren't present then?

21 A. No, sir.

22 Q. Who was present then?

23 A. I don't have any idea.

24 Q. But you were not present when the written statement
25 was given?

1 A. I was not present when the written statement was
2 given, I was only present during the oral statement.

3 MR. RAY: All right, nothing further.

4 MR. CHILDS: Just one more, Your Honor.

5 REDIRECT EXAMINATION

6 Q. (Mr. Childs) Following the oral statement, did some
7 one else come in and take a written statement from him to
8 your knowledge?

9 A. Yes. In other words, my understanding was that Inmate
10 Cox was taken to R & E where the blue jeans that he had
11 stated the shank had put two holes in it was confiscated,
12 and I was not present during the time that this took place.

13 MR. CHILDS: That's all the questions I would have of
14 this witness.

15 (The witness was excused.)

16 MR. CHILDS: Your Honor, as indicated, we got an oral
17 statement, and following that there is a written statement.
18 So, I would call Thomas Millwood to the stand in regard to
19 that.

20 ~~THOMAS MILLWOOD~~

21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 Q. (By Mr. Childs) Mr. Millwood, how are you employed?

24 A. Contraband Officer, I work out of the Investigator's
25 Office.

1 Q. So, you work with the Chief Investigator, Mr. Counts?

2 A. Yes, sir.

3 Q. Now, on May 10th, how were you involved with this
4 assault on Officer Floyd Peeks?

5 A. Around four o'clock they called us in to come to the
6 institution, said they had an officer that had been stabbed.
7 So, I got there about, maybe, a quarter to five, and I met
8 the other contraband officer, which is J. J. Brown, and him
9 and myself were informed by the Warden to go around to Q-1
10 or on the yard to see what we could find out about the
11 stabbing.

12 We went down there and walked around and talked, which
13 we didn't find out anything that much. We did hear that
14 there was one inmate that wanted to talk to somebody.

15 Q. Who was that?

16 A. I have no idea, sir.

17 Q. What did you do after that?

18 A. We went to Q-1 and then we decided to walk back up to
19 Operations and see if anybody had heard anything. When we
20 got up there, Chief Brock-- I believe it was just Chief
21 Brock, was bringing Mr. Cox out of the handcuffs, and he
22 asked myself and Mr. Brown to carry him to R&E.

23 Q. - Did you do that?

24 A. Yes, sir.

25 Q. What happened there at R&E?

1 A. We stood back in the back for a while, and then we
2 were going to get Mr. Cox to give myself and Mr. Brown a
3 statement. So, Mr. Brown went back down to the office, he
4 got the tape recorder and a note pad. We took Mr. Cox in
5 the supervisor's office in "L" Building, We asked him if he
6 had any objection to having it taped, and he said "No."
7 So, instead of writing it down, we went ahead and taped his
8 conversation.

9 Q. This was after Mr. Brock and Mr. Riley had already had
10 him in their office?

11 A. Yes, sir.

12 Q. Were you aware of whether or not he had been read his
13 rights in there?

14 A. Yes, sir, they told us he had already been read his
15 Rights.

16 Q. Prior to you talking this statement, did he indicate
17 that he wanted a lawyer?

18 A. No, sir.

19 Q. Did he indicate he didn't want to talk to you?

20 A. No, sir.

21 Q. Did he indicate any reluctance whatsoever to give you
22 this statement?

23 A. No, sir.

24 Q. Did you threaten him or coerce him in any way whatso-
25 ever?

1 A. No, sir.

2 Q. Did you use any force or any kind of intimidation?

3 A. No, sir. We even took the restraints off of him when
4 we went in the room.

5 Q. And when you turned the tape recorder on, what did he
6 tell you?

7 A. Well, Mr. Brown started questioning him to start with
8 and and he asked him did he do it, and he said, "Yes." And
9 then he told us about-- I believe he said he carried the
10 shank-- had been carrying the shank two days and if anybody
11 pulled him over and shook him down that they would've got
12 stuck then.

13 Q. All right, what else did he tell you?

14 A. He said that Mr. Peeks just happened to be there, that
15 he really wanted Mr. Sewell.

16 Q. Okay. I'll show you what's been marked State's
17 Exhibit No. 2 for identification. Could you identify that
18 for us, please, sir?

19 A. It's a statement he give us off the tape.

20 Q. That's the statement transcribed off the tape. Can
21 you read that over real closely for us and tell us if that's
22 a true and accurate transcription of that statement from the
23 tape?

24 A. Yes, sir.

25 Q. Is Paul Cox's signature on the last page of this?

1 A. Yes, sir, but he signed that I think a couple of days
2 afterwards because we had to take it off the tape and write
3 it down.

4 Q. But this is a true transcription of what was on the
5 tape?

6 A. Yes, sir.

7 Q. To your knowledge?

8 A. Yes, sir.

9 MR. CHILDS: I move this in evidence as far as this
10 suppression hearing is concerned, Your Honor.

11 THE COURT: Just mark it.

12 MR. CHILDS: I believe that's all the questions I
13 have of this witness.

14 THE COURT: Mr. Ray.

15 CROSS EXAMINATION

16 Q. (By Mr. Ray) Officer Millwood, now who all was
17 present in there right before the statement was tendered,
18 do you remember?

19 A. Myself, Mr. Cox and Mr. Brown.

20 Q. That is Officer J. J. Brown?

21 A. Yes, sir.

22 Q. Is he here today?

23 A. No, sir.

24 Q. What was the agreement about the inmates Abernathy,
25 Gerald, Johnson and Cobb being released?

- 1 A. I have no idea, sir.
- 2 Q. Were you aware that those four inmates had been locked
3 up prior to the giving of this statement by Mr. Cox?
- 4 A. Yes, sir. Well, they were in the holding cells.
- 5 Q. And are you aware that they were released after the
6 statement was given?
- 7 A. No, sir, there was not anything said about them as far
8 as when we got the statement from Mr. Cox.
- 9 Q. All right, now, when Mr. Cox gave this statement which
10 was reduced to writing, his rights were read to him, is that
11 correct?
- 12 A. No, sir, they had already been read to him.
- 13 Q. Previously?
- 14 A. Yes, sir.
- 15 Q. At six o'clock?
- 16 A. Yes, sir.
- 17 Q. All right, and that was on the 10th of May?
- 18 A. Yes, sir, approximately, seven o'clock.
- 19 Q. When the statement-- there were two statements, an
20 oral statement and a written statement, is that correct?
- 21 A. I don't have any knowledge of the oral statement, Sir.
- 22 Q. All right, when the written statement was given, were
23 his rights read to him at that time?
- 24 A. No, sir.
- 25 Q. They were not read?

- 1 A. No, sir.
- 2 Q. And that was sometime later?
- 3 A. Yes, sir.
- 4 Q. And, in fact, the written statement was not signed
- 5 for-- well, until two days later by Mr. Cox, is that
- 6 correct?
- 7 A. I think so, sir.
- 8 Q. Were his rights read to him before he signed the
- 9 statement?
- 10 A. I have no idea, sir, I didn't take the statement up
- 11 there to have it signed.
- 12 Q. Is Albert Thompson here today?
- 13 A. I don't see him, sir.
- 14 Q. Who is he?
- 15 A. He's the Supervisor over Max.
- 16 Q. Is he also a Notary Public?
- 17 A. Yes, sir.
- 18 Q. And is he the one that notarized the paper?
- 19 A. If his name is on there, I guess he did, sir. Like I
- 20 said, I was not there.
- 21 Q. And he notarized it when Mr. Cox signed the statement?
- 22 A. I do not know, sir, I was not there.
- 23 Q. Would you look at State's Exhibit No. 2---
- 24 A. Well, if his name's on it, he did, but I was not
- 25 present when it was done, so I don't know. If his name is

1 on it, he did it, sir.

2 Q. You don't know, in fact, if Mr. Cox's rights were read
3 to him before this statement was signed, do you?

4 A. No, sir, I do not. All I can testify to is what Mr.
5 Cox told us on the tape.

6 Q. And, also, you don't know all about this agreement
7 with the four inmates being locked up in the holding cell?

8 A. Sir, I don't have any knowledge of any agreement what-
9 soever. I was not there when he talked to Chiefs?

10 Q. But you know that those four people had been put in
11 the holding cell, you know that?

12 A. I was aware of it when I come in.

13 MR. RAY: Okay, that's all.

14 REDIRECT EXAMINATION

15 Q. (Mr. Childs) In fact, everybody was locked in their
16 cells, wasn't they?

17 A. Everybody was locked up but these guys were brought up
18 individually to be put on the Hill.

19 MR. CHILDS: That would be all the questions I'd have
20 of this witness.

21 (The witness was excused.)

22 MR. CHILDS: The State would call Joseph Counts

23 JOSEPH COUNTS

24 having been first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 Q. (By Mr. Childs) How are you employed, Mr. Counts?

2 A. South Carolina Department of Corrections.

3 Q. What are your duties there?

4 A. I'm the Investigator.

5 Q. Where, particularly, are you employed?

6 A. Perry Correctional Institution.

7 Q. Now, on May 10th of this year, were you called to the
8 institution or were you already there?

9 A. I was called to the institution.

10 Q. What time were you called?

11 A. I received the call at approximately seven p.m. I was
12 out of town when the incident took place.

13 Q. Did you have any contact with Inmate Cox on that date?

14 A. No, sir, I did not.

15 Q. Did you become aware that he had given a statement?

16 A. Yes, sir.

17 Q. Tell me about how you became aware of that?

18 A. I arrived at the institution at approximately seven
19 thirty. I was briefed by on-duty officers, which was Chief
20 Riley and Chief Brock who had been called in. I was also
21 briefed by the Warden, Mr. Horton, and I was briefed by
22 Supervisor Sewell that an incident had taken place at
23 approximately three p.m. I was told that the officer who
24 was attacked, Officer Peek, had identified an inmate. I
25 was told at a later point in time the inmate came up to

1 Operations, which I subsequently found out was Mr. Cox, that
2 his rights were read to him by our two Chiefs, that they
3 were given to him, that he understood them. I was told by
4 the contraband officers that work out of the investigator's
5 office that he gave an oral statement on tape. That was
6 turned over to me. I listened to that statement, and sub-
7 sequently had that statement transcribed the following
8 morning.

9 Q. Is this the tape that you listened to?

10 A. Yes, sir, that's the tag that I put on it when they
11 turned it over to me and put it in that envelope.

12 Q. Are you familiar with Officer Millwood?

13 A. Yes, sir, I am.

14 Q. Did you recognize his voice on this tape?

15 A. Yes, sir, I did.

16 Q. All right, are you familiar with Officer Brown?

17 A. Yes, sir, I am.

18 Q. Did you recognize his voice on this tape?

19 A. Yes, sir.

20 Q. Where is Officer Brown this week?

21 A. Officer Brown is on, as far as the Department is
22 concerned, on approved military leave. He's in the National
23 Guard.

24 Q. Where is he, on maneuvers or something?

25 A. He's on maneuvers on Florida.

1 Q. Now, you had this tape transcribed?

2 A. Yes, sir, I did.

3 Q. What did you do after that?

4 A. After the tape was transcribed, which took a good
5 portion of Monday to have it transcribed, the following
6 morning I took it up to Mr. Cox and presented it to him. We
7 brought in Supervisor Thompson, who is a Notary, at the time
8 asked Mr. Cox if he wanted to read the statement, we wanted
9 to have it signed. He indicated to me that there were some
10 conditions and I said, "I have no knowledge of conditions,"
11 that we could not discuss anything before the statement was
12 signed because it had to be a voluntary signature, that
13 after the statement was sign, if he understood everything in
14 it, that if he wanted to talk with me in anything incidental
15 to the statement, we would discuss any other matters.

16 Q. Did he indicate to you that he was knowledgeable of
17 his rights?

18 A. Yes, sir, he did. I asked him if he understood what
19 he was doing, and he said, yes, he did.

20 Q. And to your knowledge, he has been arrested and con-
21 victed on other charges before?

22 A. I have been told that before, yes, sir.

23 Q. Did he, in fact, sign this what I've had marked as
24 State's Exhibit No. 2?

25 A. Yes, sir, he signed that in my presence.

1 Q. Okay, and is this the true and accurate transcription
2 of that statement taken from the tape?

3 A. Yes, sir, that's the original taken from this tape.

4 Q. Did he at any time ask for an attorney or ask that he
5 not sign this statement, or indicate any unwillingness to
6 sign this statement?

7 A. No, sir, he did not.

8 Q. Did he appear to you at the time he signed this
9 statement to understand what was going on?

10 A. Yes, sir, he did.

11 Q. Did you threaten him, coerce him or promise him any-
12 thing in order to get him to sign this statement?

13 A. No, sir, I did not.

14 MR. CHILDS: I believe that's all the questions I
15 would have of this witness.

16 THE COURT: Mr. Ray.

17 CROSS EXAMINATION

18 Q. (By Mr. Ray) Mr. Counts, what is your capacity with
19 Perry?

20 A. Investigator, sir.

21 Q. Chief Investigator?

22 A. Yes, sir.

23 Q. And I believe you stated that when the original state-
24 ment was made that Officer Millwood, Mr. Cox, and J. J.
25 Brown were present, is that correct?

1 A. No, sir, I didn't say that when the written statement
2 was signed. They were present when the oral statement was
3 given on tape.

4 Q. When the oral statement was given on tape. And what
5 we have is a document, State's Exhibit No. 2, entitled
6 Affidavit of Mr. Cox, that is the original version of that
7 oral statement, is that correct?

8 A. Well, I wouldn't say it was a version, it was an exact
9 transcription of the tape.

10 Q. All right, if you would, could you examine State's
11 Exhibit No. 2, down at the bottom I believe there is some
12 wording consistent with the Constitutional rights to which
13 Mr. Cox was entitled to be informed, is that correct, "I am,
14 giving this statement of my own free will," and that appears
15 right below "Continued Page 2"?

16 A. I see that on the bottom of the page, yes, sir.

17 Q. Is that part of what's on the tape, or was that some-
18 thing that is on all of these forms that you use for
19 affidavits?

20 A. That is something that is on the form as an affidavit
21 that we are obligated to read to the inmate that he signs as
22 part of the affidavit.

23 Q. Could you show me, then, where on the part of the
24 statement of Mr. Cox that was given-- where were his rights
25 read to him on the statement, or during the statement itself,

1 where is that reduced to writing off of the tape, where is
2 that on the piece of paper?

3 A. That was, to my knowledge, not on the tape, or it would
4 have been on the statement here itself as part of the body
5 of the statement.

6 Q. So, in other words, his rights were not given to him
7 when the statement was made, is that correct?

8 A. His rights were given to him just prior to when the
9 taped statement was made, sir.

10 Q. What is the time at the top of the statement?

11 A. This one, sir?

12 Q. Yes, sir.

13 A. Six-thirty p.m.

14 Q. Does it say six thirty-five p.m.?

15 A. Excuse me, six thirty-five p.m.

16 Q. All right, on State's Exhibit No. 1, I believe there
17 is a time on that. Could you read that time to me, please?

18 A. Yes, sir, this says signature at six-0-one p.m.

19 Q. Now, I believe the prior testimony, that you have
20 heard, and which you know of your own knowledge, would
21 indicate that there were different people present during the
22 so-called oral statement, such as Officer Riley, Officer
23 Brock, is that correct? In other words, when the statement
24 was made, it was reduced to the writing, there was different
25 people present, there were other officers there, is that

1 correct?

2 A. My understanding is that he talked with Chief Riley
3 and Chief Brock, and subsequent to his conversation with
4 them, he was turned over, after his rights being read, to
5 Officer Brown and Officer Millwood.

6 Q. So, he was in the custody of other people, is that
7 correct?

8 A. Yes, sir.

9 Q. And is there any indication that in the custody of the
10 people that were present when the statement was given that's
11 on the tape that was reduced to writing, is there any
12 indication anywhere that he was read his rights before this
13 statement was given? I mean, that's about thirty-four
14 minutes difference in time.

15 Q. Well, I'm not sure what significance that time has but
16 these officers were instructed to take a statement, that he
17 had been read his rights.

18 Q. Are you familiar with the fact that four inmates had
19 been locked up during the investigation of the complaint
20 against Mr. Cox, in other words, the people we've been
21 talking about before, Mr. Abernathy, Mr. Johnson, Mr.
22 Gerald, and Mr. Cobb, they were in the holding cell?

23 A. I only learned of that the next day, sir.

24 Q. But you do know about that?

25 A. I knew that some inmates were locked up.

1 Q. Did you know they were released as a result of Mr. Cox
2 giving a statement?

3 A. I knew that they were released. I was not told that
4 that had any direct bearing on his statement, and I did not
5 have them released because of any direct bearing on his
6 statement.

7 Q. But were they, in fact, released?

8 A. Yes, sir, that would be in record that they were
9 released.

10 Q. Is it possible that between six-0-one, or six o'clock
11 p.m. and six thirty-five, when the statement was given, the
12 one that's State's Exhibit 2, that certain promises were
13 made to Mr. Cox so that the inmates would be released, is
14 that possible?

15 A. I would have to say no, because if you're asking me if
16 I knew anything about it, I asked the two officers, Officer
17 Brown and Officer Millwood, if they had promised him
18 anything and they said, "No." I take their word for that.

19 Q. Officer Brown and Officer Millwood, but also we have
20 Officer Riley and Officer Brock that were there during the
21 first oral statement, and whoever else was present in the
22 interim, you know, in that thirty-five minute period, we
23 don't know who else was there.

24 A. Well, I believe that they have testified that they
25 didn't promise him anything for the statement. I believe

1 there's been testimony that they turned Mr. Cox over to the
2 Contraband Officer, so I have no other knowledge than their
3 testimony into that, sir.

4 Q. But it is possible?

5 A. I would say it wasn't, from their testimony, sir.

6 Q. There was no one else present besides Officers Riley,
7 Brock, Brown, Millwood, and yourself?

8 A. I was not present at that time. I came in approxi-
9 mately seven-thirty. There were many people present at the
10 institution at that time because of the assault that
11 happened but, if I remember correctly, they have testified
12 that Mr. Cox was brought to them and then Mr. Millwood
13 testified that they came up and he and Mr. Brown, and Mr. Cox
14 was turned over to them by Chief Brock and Chief Riley, so I
15 would have to say, yes, there were a lot of people around
16 but this incident he was turned over from one set of
17 officers to another.

18 Q. Okay, also, what is established, though, when the 6:35
19 statement was given, Mr. Cox did not have his rights read to
20 him?

21 A. Not a second time, no, sir.

22 Q. And he was in the custody of different people at the
23 time?

24 A. He was turned over to the Contraband Officers, yes,
25 sir.

1 Q. And, another feature here is when did Mr. Cox sign
2 this statement that he gave, the one that's State's Exhibit
3 No. 2?

4 A. Mr. Cox signed this statement on May 12th.

5 Q. Who was present when he signed the statement?

6 A. I was, sir.

7 Q. Who else?

8 A. Mr. Thompson, the Supervisor, was there as a witness.

9 Q. Is he here today?

10 A. No, sir, he is not.

11 Q. So, he can't testify as to what he saw. When Mr. Cox
12 signed the statement on May 12th, were his rights read to
13 him then?

14 A. I did not read them again, no, sir.

15 MR. RAY: That's all.

16 MR. CHILDS: That's all I have of this witness.

17 (The witness was excused.)

18 MR. CHILDS: There is another statement but it is to
19 an inmate, and we would contend it is an admission, and I
20 don't think it would be subject to suppression, though Bob
21 has filed a motion suppressing any and all statements. In
22 all fairness to him, I must disclose it. I think he is
23 aware of it. There is a statement to another inmate.

24 THE DEFENDANT: I'd like a copy of it.

25 MR. RAY: He says he would like a copy of it.

1 THE COURT: Is it written-- well, obviously, it is an
2 oral statement.

3 MR. CHILDS: It is a statement written down by the
4 inmate, his statement to the authorities as to what the
5 defendant told him.

6 THE COURT: Do you move to suppress this as well?

7 MR. RAY: Yes, sir. I haven't been served with a copy
8 of it, I haven't seen that.

9 (Statement referred to was shown counsel.)

10 MR. RAY: I would move to suppress that, also.

11 THE COURT: Do you have the inmate here?

12 MR. CHILDS: Yes, sir.

13 THE COURT: Well, you're going to have to establish
14 that it was a proper statement, that he was not an agent of
15 the government.

16 MR. CHILDS: Yes, sir.

17 We call Ralph Gossett to the stand.

18 RALPH GOSSETT

19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 Q. (By Mr. Childs) Mr. Gossett, are you presently
22 incarcerated?

23 A. Yes, sir.

24 Q. What were you incarcerated for?

25 A. Two first degree rapes and armed robbery.

1 Q. All right, back in May of this year, were you incar-
2 cerated at Perry Correctional facility?

3 A. Yes, sir.

4 Q. Who was your roommate there?

5 A. Paul Cox.

6 Q. On that date, did Mr. Cox tell you something about the
7 stabbing of a guard?

8 A. Yes, sir.

9 Q. What did he tell you?

10 A. Well, when I was asleep I had been woken up by
11 yelling, and when I woke up I'd seen on TV that there was a
12 basketball game on and when I had looked up, you know, I
13 figured, well, there was just a bunch of inmates out there
14 yelling because of the basketball game. And when I realized
15 I couldn't go back to sleep, I got up and was gonna go
16 outside and found that the room was deadlocked, on deadlock.
17 And they had evidently, closed or locked the dorm down.
18 And I seen the officer laying out there on the floor,
19 stretch out on the floor, and there was a couple of officers
20 out there with him. And they had brung everybody back to
21 the dorm, and they brung Paul back in. He got to talking
22 about the stabbing and they took me and him out in front of
23 the officer to be identified.

24 Q. What did he tell you about the stabbing?

25 A. Well, he had come in and said that he had did it, you

1 know.

2 Q. Was that in response to any question that you posed to
3 him, or did he voluntarily tell you?

4 A. He just told me.

5 Q. All right, at that time your only capacity there at
6 Perry was as an inmate?

7 A. Yes, sir.

8 Q. You weren't working for any investigative branch of
9 the South Carolina Department of Corrections?

10 A. No, sir.

11 Q. That previous day had Mr. Cox told you something in
12 regards to a guard?

13 A. There had been talk about a couple of guards and
14 inmate.

15 Q. What did he tell you that previous day?

16 A. He just-- he'd told me about there was an inmate that
17 was giving him some problems and he was gonna get him and
18 the officer.

19 Q. What did he say?

20 A. Well, said that the officer was a rat, was always
21 harassing people, and they was gonna get him out of the way.

22 Q. Did you ever see a shank on Mr. Cox?

23 A. There was one in the room.

24 Q. Now, do you work for any part-- any investigative
25 branch of the South Carolina state government, or the U.S.

1 Government in any capacity whatsoever?

2 A. No, sir.

3 Q. And your only dealings with Mr. Cox was as an inmate?

4 A. Yes, sir.

5 MR. CHILDS: That's all the questions I would have of
6 this witness.

7 CROSS EXAMINATION

8 Q. (By Mr. Ray) Mr. Gossett, what are you incarcerated
9 for?

10 A. Two first degree rapes and an armed robbery.

11 Q. Two first degree rapes and armed robbery?

12 A. Yes, sir.

13 Q. How much time are you serving?

14 A. Fifty-five years.

15 Q. How much of that time have you served?

16 A. Almost a year and a half.

17 Q. Are you trying to get a transfer?

18 A. No, sir.

19 Q. Would you want to get a transfer?

20 A. Wouldn't matter to me.

21 Q. Have you talked to anybody about getting a transfer?

22 A. Well, they had transferred me from Perry to McCormick
23 Correctional Institution, but I'd already signed up for
24 that.

25 Q. You are getting a transfer?

1 A. I'm already there.

2 Q. You are already to McCormick?

3 A. Right.

4 Q. Did you talk to Mr. Counts about that?

5 A. Yes, sir.

6 Q. You did?

7 A. Yes, sir.

8 Q. Did you talk to him in relationship to making this
9 statement about that?

10 A. I don't understand what you mean.

11 Q. During the time that they talked to you about giving
12 this statement for the Solicitor's Office, was there any
13 discussion about you being transferred to McCormick?

14 A. Well, I had told him, mentioned to him that, you know,
15 I had already signed, put my name on the list to go McCormick
16 when it opened up.

17 Q. And now you're there?

18 A. And now I'm there.

19 Q. So, there was some discussion?

20 A. Well, I told him that I was already put down on a
21 piece of paper for, you know, put down on the list. To my
22 understanding the Warden had came down and handpicked the
23 first few people that went, had looked at everybody's
24 jacket, and there was a man came down from McCormick to
25 interview some people about going and I had put my name down

1 to go and this was way before that even happened.

2 Q. You got the transfer?

3 A. Yes, sir.

4 Q. Was there a contract on your life in Perry?

5 A. Well, there was some guys that heard that I had talked
6 to-- had give my statement, and they had threatened and they
7 had put me up on the hill.

8 Q. Would you rather be at McCormick than at Perry?

9 A. Yes.

10 Q. You wouldn't give this statement just so you could get
11 transferred to McCormick?

12 A. No, sir.

13 Q. Wasn't there a contract on your life before you gave
14 this statement to Mr. Counts?

15 A. Well, they had-- when I first came in, it had come to
16 my understanding that the two girls that I had allegedly
17 raped had said they was gonna get some guys to get me.

18 Q. So, there was a contract out on you?

19 A. If you want to call it that.

20 Q. You wouldn't give this statement today, you know, just
21 to-- so you could get transferred to McCormick, would you?

22 A. No, sir, I'm already there.

23 Q. But you weren't there before you gave the statement to
24 Mr. Counts, were you?

25 A. No, sir, I was still at Perry.

1 Q. Do you remember what you said in the statement?
2 Did you say something to the effect, "I took Paul's state-
3 ment to me as a joke because he talks a lot"?

4 A. Right.

5 Q. "I did not take it seriously"?

6 A. Not at first.

7 Q. Did you say that?

8 A. Yes, sir, 'cause I knew him out on the street.

9 Q. You knew him out on the street?

10 A. Yes, sir.

11 Q. You think some statements that Paul gives, says he's
12 going to give, he's just talking?

13 A. Well, he'd done a lot of stuff out on the street that
14 he talked and never really done anything.

15 Q. So, he talks a lot?

16 A. Right.

17 Q. And you didn't take him seriously?

18 A. No, sir, not till it happened.

19 Q. How do you know he did it?

20 A. Well, I didn't eyewitness it, but the same shank was
21 used that was in the room.

22 Q. How do you know that?

23 A. 'Cause I seen it, I know what it looks like.

24 Q. There was a shank in your room. How do you know it
25 was the same shank that was used?

- 1 A. By the handle that was sticking out of the officer.
- 2 Q. By the handle?
- 3 A. Yes, sir.
- 4 Q. Did you go down and look at the officer with the
- 5 handle sticking in him?
- 6 A. They brung us out, they brung me and Paul both out and
- 7 went in front of the officer, and where our room was was in
- 8 Q1A04, and right where the officer was laying, you know, when
- 9 the ambulance was there and was rolling him over, you
- 10 could see it sticking out.
- 11 Q. Did you see Paul Cox stab Officer Peeks?
- 12 A. No, sir.
- 13 Q. So, you don't know if he did it or not?
- 14 A. No, sir, and that's what I had told them.
- 15 Q. But you're saying today that you heard Paul say that
- 16 he was gonna get this particular Officer Peeks, is that
- 17 right?
- 18 A. Right.
- 19 Q. Would it surprise you if somebody else said that Paul
- 20 had said he really wanted somebody else, Sewell, Officer
- 21 Sewell, that wouldn't surprise you?
- 22 A. No, sir.
- 23 Q. Would it surprise you if somebody else had said that
- 24 it was an indication from Mr. Cox that he didn't care who he
- 25 got, would that surprise you?

1 A. No, sir.

2 Q. Well, you are at McCormick now and you weren't there
3 before you made your statement, were you?

4 A. No, sir, but that wasn't no promise. And I had also
5 told him that I had realized, you know, that that wasn't no
6 promise. He said that he couldn't make me any promises, and
7 I said I realized that.

8 Q. But there was some discussion about a transfer in
9 relationship to this?

10 A. Yes, sir, but my name was already down on that list to
11 go. It was already approved, I mean, you know.

12 Q. It was already approved? I thought you said before
13 that it wasn't approved, that your name was just on the list?

14 A. My name was on the list to go, to go to McCormick.

15 Q. How many people were on the list?

16 A. I don't know, there was about a hundred and fifty of
17 us shipped there.

18 Q. A hundred and fifty---

19 A. They got some guys from other institutions, also.

20 Q. How many people went down there?

21 A. Right now there's about three hundred and something
22 there.

23 Q. I mean, off of that hundred and fifty list, how many
24 got to go?

25 A. Oh, I don't know how many was on the list at Perry.

1 That's how many was at the institution the first day that
2 we'd got there, and that's how many was there when we-- for
3 about a whole week. But there was, maybe, fifty or sixty of
4 us went down there, I don't know. I didn't see no list.
5 They'd took two busloads that morning.

6 Q. There was some discussion with Mr. Counts about you
7 going to McCormick if you made this statement?

8 A. I made the statement to them that I was on the list,
9 yes.

10 MR. RAY: That's all.

11 THE COURT: Mr. Gossett, as I understand it, this
12 statement that you heard, quoting this defendant, was right
13 about the time this happened?

14 THE WITNESS: Excuse me?

15 THE COURT: What you're saying you heard Mr. Cox say,
16 he said right after this incident happened, within an hour
17 after the incident happened, is that right, except --

18 THE WITNESS: Before and after.

19 THE COURT: Sir?

20 THE WITNESS: Before and after?

21 THE COURT: Yeah, after it happened?

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay, no law enforcement officer told you
24 to go to Mr. Cox and try to see what you could get him to
25 say?

1 THE WITNESS: No, sir.

2 THE COURT: Okay, step down.

3 MR. CHILDS: That's all the State would have in
4 regard to the suppression motion, Your Honor.

5 THE COURT: All right, Mr. Ray, do you wish to
6 present any testimony on this issue?

7 MR. RAY: Yes, sir, I do.

8 At this time I'd make a motion, Mr. Cox had asked that
9 Officer J. J. Brown be here, and I see that he is not here.
10 I believe there's been some testimony from Mr. Counts that he
11 is on reserve duty. We would ask that this hearing be
12 postponed until we can have Officer Brown present.

13 THE COURT: Did you subpoena Officer Brown?

14 MR. RAY: I did not give him a written subpoena but
15 I had an understanding that he should be here. Everybody
16 involved with the statement should be here.

17 THE DEFENDANT: Mr. Traxler, when we had a preliminary
18 hearing the 16th of this last month, I made a request at the
19 preliminary hearing for J. J. Brown to be subpoenaed, for Mr.
20 Minyard to be subpoenaed, four or five people I made a
21 request to be subpoenaed. None of the people that I made a
22 request for has been subpoenaed here today.

23 THE COURT: Did you talk with Mr. Brown, Mr. Ray,
24 yourself?

25 MR. RAY: No, sir, I haven't spoken to Mr. Brown.

1 Now, Officer Minyard has just walked in the door a minute
2 ago.

3 MR. CHILDS: Of course, Your Honor, the State is
4 under no duty to subpoena the defendant's witnesses. Mr. J.
5 J. Brown informed us that he had military leave coming up,
6 that he had to be in Florida, and we felt that we had
7 sufficient witnesses in regard to these statements as it was,
8 and we did not subpoena him either.

9 MR. RAY: I might add Mr. Cox says that Officer J. J.
10 Brown would testify as to the promise made as to releasing
11 these inmates that have been talked about if this statement
12 was given.

13 THE COURT: Before I rule on that, do you have any
14 other witnesses you wish to present?

15 MR. RAY: Yes, sir, I would like for Mr. Cox to take
16 the stand.

17 THE COURT: Come around, Mr. Cox.

18 (The Defendant Cox shook his head negatively.)

19 MR. RAY: We would call Officer Minyard to the stand.

20 THE COURT: Come around, Mr. Minyard.

21 CHARLES MINYARD

22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 Q. (By Mr. Ray) Mr. Minyard, where do you work?

25 A. Perry Correctional Institution.

- 1 Q. And how long have you been working there?
- 2 A. Three years.
- 3 Q. What is your capacity there at this time?
- 4 A. Explain what you mean.
- 5 Q. What is your job?
- 6 A. Correctional Officer, sir.
- 7 Q. What was your capacity on May 10, 1987?
- 8 A. Well, I was called to the scene on the stabbing.
- 9 Q. Were you a Correction Officer on May 10th?
- 10 A. Yes, sir, I was on duty at the time.
- 11 Q. All right, do you remember an incident involving
- 12 Officer Peek on May 10th?
- 13 A. Yes, I do.
- 14 Q. Could you relate to the Court what you remember about
- 15 the incident?
- 16 A. Yes, I can. We was called to the scene, and when I
- 17 arrived, he was lying on the floor.
- 18 Q. Who was lying on the floor?
- 19 A. Officer Peek, sir.
- 20 Q. All right.
- 21 A. My Chief and I, of course, locked everybody down and
- 22 we decided to pull some guys to have him identify.
- 23 Q. Who did you pull?
- 24 A. Well, we pulled Cox, Paul Cox.
- 25 Q. Who all did you pull the first time?

- 1 A. We pulled Roger Johnson, but he stated that they
2 weren't the one that did it.
- 3 Q. Who stated that they weren't the ones?
- 4 A. Peek.
- 5 Q. Officer Peek stated that?
- 6 A. Yes, he did.
- 7 Q. Did you pull Mr. Jarrell?
- 8 A. He stated that Roger Johnson did not do it.
- 9 Q. Who else did he state did not do it, who else had you
10 pulled?
- 11 A. I can't remember all the name but when we pulled Mr.
12 Cox initially he stated that he did do it, but he changed his
13 mind.
- 14 Q. Was Officer Brown there when Mr. Cox was pulled?
- 15 A. I don't recall seeing Officer Brown.
- 16 Q. Why did you pull Mr. Cox?
- 17 A. Because the description we had said he had curly hair,
18 so that's the reason we pulled him.
- 19 Q. You pulled everybody with curly hair?
- 20 A. Everybody that we could locate at the time, yes.
- 21 Q. Did you have a description from Officer Peek about a
22 tattoo on an arm?
- 23 A. I'm not familiar with that.
- 24 Q. Not familiar with that. And you pulled Mr. Cox
25 because he had curly hair?

1 A. That's correct.

2 Q. That's the only reason you pulled him?

3 A. To my knowledge, yes.

4 Q. Do you remember if an inmate named Abernathy, and
5 another name Jarrell, and you talked about Johnson, and another
6 named Cobb were put in the holding cell while the investigation
7 was going on?

8 A. Yes, I recall that.

9 Q. Do you remember Officer Brown talking to Mr. Cox
10 about those people being in the holding cells?

11 A. I'm not aware of that, I wasn't present at that time.

12 Q. You were not present?

13 A. No, I was not.

14 Q. Did Mr. Cox give a statement?

15 A. I wouldn't know, I have no idea.

16 Q. All right, do you know if after the investigation was
17 completed if those four inmates I just mentioned were
18 released from the holding cell?

19 A. I'm not aware of that.

20 Q. Relating back to the incident, what time did it occur,
21 do you remember?

22 A. It was approximately, anywhere from two-thirty to
23 three-thirty in the afternoon, Sunday afternoon.

24 Q. Did Officer Peeks become unconscious as a result of
25 the wound?

1 A. Not in my presence.

2 Q. What description was he giving of his assailant?

3 A. Well, as I stated before he said he had curly, long
4 curly hair, brown curly hair.

5 Q. That's all, anything else you remember relative to the
6 stabbing that you want to relate at this time?

7 A. No, I don't have anything I'd like to include.

8 Q. Did you ever hear Mr. Cox read his rights?

9 A. No, I didn't hear that.

10 MR. RAY: That's all.

11 MR. CHILDS: No questions, Your Honor.

12 (The witness was excused.)

13 MR. RAY: Your Honor, Mr. Cox says he does not wish
14 to take the stand. He understands, and I have advised him
15 that he can take the stand and anything he says will simply
16 be questioned by the Solicitor's Office, and he has a right
17 to do that.

18 THE COURT: Mr. Cox, you understand you can testify
19 in this part if you want to, that nothing you say in this
20 part of the hearing can be used in the trial against you,
21 you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: You do not wish to testify?

24 THE DEFENDANT: No, sir.

25 THE COURT: Tell me again what the situation is with

1 respect to Officer Brown, what do you propose that he would
2 testify to?

3 MR. RAY: Your Honor, Mr. Cox tells me that Officer
4 Brown would testify to the fact that a promise was made
5 whereby the four inmates would be released from the holding
6 cell if the statement was given. Therefore, the statement
7 was based on a promise.

8 MR. CHILDS: Your Honor, I did speak with Officer
9 Brown on Friday, and he said nothing of the such, but I know
10 I can't testify in regards to that.

11 MR. RAY: In relation to that, Mr. Cox says that
12 Officer Thompson here knows about the promise, I believe, or
13 promised to come to court and testify.

14 Well, Mr. Cox says that only Mr. Brown will speak now
15 to the fact that the promise was made.

16 THE COURT: Mr. Brown was not subpoenaed?

17 MR. RAY: We asked at the prelim that everybody
18 involved with the statement be brought and they assured us
19 they would.

20 MR. CHILDS: Your Honor, I'm just not aware of that.

21 MR. RAY: No written subpoena was given. The prelim
22 was about three weeks ago, I believe.

23 MR. COX: And I asked Mr. Ray at that time to
24 subpoena Mr. Brown, Millwood and the rest of them. No
25 subpoenas were sent out. I can't subpoena-- send subpoenas

1 out from where I'm at.

2 THE COURT: Who handled the preliminary hearing from
3 the Solicitor's Office?

4 MR. RAY: Mr. Clements did.

5 THE COURT: Well, let me let this jury go for this
6 morning. Bring the jury in. Mrs. Overstreet would be the
7 Forelady.

8 (The jury was brought into the courtroom.)

9 THE COURT: Ladies and Gentlemen, I apologize for
10 having to keep you back there so long. There are some
11 matters that I have to take care of before we start the trial
12 of this case that by law I have to do, and it has to be done
13 outside the presence of the jury. It is taking considerably
14 longer than I thought it would and I'm going to let y'all go
15 on rather than asking you to wait back there. I'm going to
16 let you go on to lunch and ask that you be back in your jury
17 room at one-thirty.

18 While you are gone, don't talk about what this case
19 may be about and when you come back to the Courthouse, just
20 go straight back to your jury room, don't linger out in the
21 hall. You are free to go until one-thirty.

22 (The jury retired from the courtroom.)

23 (A recess was taken.)

24 THE COURT: All right, Mr. Childs.

25 MR. CHILDS: Your Honor, they say there was some kind

1 of agreement by the State or by the Investigator to bring
2 witnesses up for the defendant. In regards to that, I would
3 call Investigator Joe Counts back to the stand.

4 JOSEPH COUNTS

5 resumed the stand and testified further as follows:

6 REDIRECT EXAMINATION

7 Q. (By Mr. Childs) Mr. Counts in regard to this case,
8 did you go to a preliminary hearing which was held in this
9 matter?

10 A. Yes, sir.

11 Q. Do you remember what date that was?

12 A. No, sir, I'm sorry, but it was about two weeks ago.

13 Q. Okay, please tell us what happened at the preliminary
14 hearing.

15 A. We were told to have a preliminary hearing, myself and
16 Officer Peek went to the preliminary hearing. They called
17 me up to state the facts of the matter as I knew them, to
18 give their probable cause, and I was questioned by the
19 defense attorney. We gave the facts, answers to the questions
20 and Mr. Cox requested that he be able to talk or call up
21 Officer Peek. The attorney from the Solicitor's Office
22 stated that I was the only one he was going to call. Mr. Cox
23 stated that he wanted-- he got loud and belligerent and
24 stated he wanted to have Mr. Minyard and Riley there, which
25 I made a note of.

1 Q. That was for the preliminary hearing?

2 A. That was at the preliminary hearing, yes.

3 Q. He wanted Riley and Minyard present at the preliminary
4 hearing?

5 A. That's correct, sir. He wanted to be able to talk
6 with them, he wanted to be able to talk with Officer Peeks.

7 Q. Did you agree to do that, or did you acknowledge that
8 comment in any way whatsoever?

9 A. No, sir, I just made a note in my own file what he
10 said.

11 Q. And what he said was Riley and Minyard?

12 A. Yes, sir, that's correct, that's what I wrote down.

13 Q. Nothing in regards to Officer Brown?

14 A. No, sir.

15 Q. And what happened after he yelled that remark?

16 A. Well, after he yelled that remark, he started cursing
17 the Solicitor, or the Assistant Solicitor that was there, and
18 made accusations toward Judge Haynsworth. And I told the
19 transportation officers to remove him.

20 MR. CHILDS: I believe that's all I have in regards
21 to that matter, Your Honor.

22 THE COURT: Any questions, Mr. Ray?

23 RECROSS EXAMINATION

24 Q. (By Mr. Ray) Mr. Counts, the facts as you related
25 them, is, basically, how I remember them, I'll state that in

1 my place.

2 A. Yes, sir.

3 Q. As far as having Officer Brown brought up, the way I
4 remember what happened, I don't specifically remember that
5 his name was singled out, but there was an indication that
6 the people involved with the taking of the statement would be
7 present, or Mr. Cox wanted the people that were involved with
8 taking the statement present, do you remember something like
9 that?

10 A. Other than the fact that, normally, I would produce
11 some one who had taken a statement. I have known for approxi-
12 mately sixty days that Mr. Brown was going to camp and so I
13 didn't make an indication that he would be here at this time,
14 no, sir. But I did provide one of the officers who made that
15 statement-- or that took that statement.

16 Q. Who was that?

17 A. That's Officer Millwood.

18 Q. How many witnesses have been called, do you remember,
19 for this hearing and this trial?

20 A. All of those that are present here that when Mr.
21 Childs came by the institution that he requested be here,
22 sir.

23 MR. RAY: That's all I have at this time.

24 FUR. REDIRECT EXAMINATION

25 Q. (Mr. Childs) Just one brief-- there was no agreement

1 whatsoever about producing witnesses for this trial?

2 A. No, sir, not at the preliminary.

3 Q. And at the time of the preliminary hearing, you were
4 aware that Officer Brown was going to be on military leave?

5 A. Yes, sir, I was.

6 Q. Okay, in fact, that leave began last Saturday?

7 A. Well, he was to leave his home, he indicated, about
8 midnight Friday night.

9 MR. CHILDS: That's all I have of this witness, Your
10 Honor.

11 (The witness was excused.)

12 MR. CHILDS: I would, just to clarify the matter,
13 call Officer Millwood back to the stand.

14 OFFICER THOMAS MILLWOOD
15 resumed the stand and testified further as follows:

16 FUR. REDIRECT EXAMINATION

17 Q. (By Mr. Childs) Just to clarify this matter a bit
18 more, Mr. Millwood, was there any agreement whatsoever about
19 a release of inmates in exchange for Mr. Cox giving a
20 statement?

21 A. Not when me and Mr. Brown took the statement, no, sir.

22 Q. Was Mr. Brown ever alone in the room with Mr. Cox
23 without you there?

24 A. No, sir.

25 Q. Were you alone in the room without Mr. Brown there?

1 A. Yes, sir. Mr. Brown went down to get the tape
2 recorder out of the office.

3 Q. And Mr. Cox was given to you after they read him his
4 rights?

5 A. Yes, sir.

6 Q. Did they show you that Waiver of Rights form?

7 A. No, sir, they just told us that he had already had it
8 given.

9 MR. CHILDS: That's all the questions I would have.

10 THE COURT: Any questions, Mr. Ray?

11 MR. RAY: Yes, sir.

12 FUR. RECROSS EXAMINATION

13 Q. (By Mr. Ray) Officer Millwood, at any time was
14 Officer Brown alone with Mr. Cox?

15 A. No, sir, not when we took him up the elevator, no,
16 sir.

17 Q. Any other time was Officer Brown alone with Mr. Cox
18 prior to taking his statement?

19 A. To my knowledge, no, sir, because me and Mr. Brown
20 worked together. When we arrived at the institution, the
21 Warden told us to go to the yard and stay together.

22 Q. And were you with Officer Brown the whole time?

23 A. My recollection, yes, sir, until he left me in L-Build-
24 ing, and went back down to the office to get the tape
25 recorder.

1 MR. RAY: That's all I have at this time.

2 EXAMINATION BY THE COURT:

3 Q. (The Court) Officer Millwood, had Officer Brown--
4 do you remember when he first became involved in the investi-
5 gation of this incident, what time of day, or with respect to
6 when the incident occurred?

7 A. Well, when I got there it was between quarter to five
8 and five o'clock, I met Mr. Brown in Operations, and myself
9 and him went down to the yard and, as we were going down
10 the Warden called us on the radio and told us to go over to
11 One to see what we could find out. We went to Q-1 and
12 stayed a while, and started to walk back up to Operations.
13 We went over and got us a _____ at C-Building and come back
14 over, and that's when Chief Brock come out of the back of
15 Operations, out of the Briefing Room, with Mr. Cox and told
16 us to carry him down there.

17 THE COURT: All right, you can step down.

18 (The witness was excused.)

19 THE COURT: All right, anything further?

20 MR. RAY: Your Honor, Mr. Cox now indicates he wants
21 to take the stand.

22 THE COURT: Okay, come around, Mr. Cox.

23 PAUL LESLIE COX

24 having been first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 Q. (By Mr. Ray) Please state your name for the record.

2 A. Paul Leslie Cox.

3 Q. How old are you, Paul?

4 A. Thirty-one.

5 Q. Are you presently serving time in Perry?

6 A. Yes, sir.

7 Q. How long have you been there?

8 A. A little over four years.

9 Q. All right, do you remember certain incidents that
10 occurred on May 10, 1987? Do you remember that day?

11 A. Let me talk to you.

12 (Addressing the Court) May I speak with him for a
13 second?

14 THE COURT: Okay.

15 (Colloquy was had between the Defendant and Counsel.)

16 A. (The Defendant) I'm declining to answer that under
17 the Fifth Amendment of the Constitution.

18 Q. Mr. Cox, do you remember talking to Officer Brown and
19 Officer Millwood on May 10th?

20 A. I'm not gonna answer no questions.

21 Q. You don't want to testify?

22 A. It was a mistake I made by getting up here.

23 THE COURT: All right, you can step down.

24 (The witness was excused.)

25 THE COURT: Anything further, Mr. Ray?

1 MR. RAY: Nothing further. I would have a motion to
2 make or an argument to make in regard to the motion.

3 THE COURT: Yes, I'll be glad to hear you.

4 MR. RAY: I believe, whether or not it's been shown,
5 that a deal was struck between Mr. Cox and any of the
6 officers as to the four inmates. I do believe it has been
7 established that there were four inmates that were locked up,
8 Mr. Abernathy, Mr. Johnson, Mr. Jarrell, and Mr. Cobb, and
9 subsequent to the statement being made that these people were,
10 in fact, released back out to the yard. I think that has
11 been established. The voluntariness of the written state-
12 ment which was, in fact, I believe the second statement that
13 was given, I think, has not been shown. As the record would
14 indicate, Mr. Cox signed a waiver form at 6:01 p.m. on May
15 10th, that there was an oral conversation, that there was a
16 transfer of custody. I believe originally Officer Riley and
17 Officer Brock were present, and then there was some transfer
18 of custody where Officer Millwood and Officer Brown were
19 present, and some other people were involved. A written
20 statement, or a statement that was later transcribed to
21 writing, was taken at 6:35. I don't believe there is any
22 indication whatsoever in that statement that Mr. Cox was read
23 his rights. There is printed on that written transformation
24 of the statement some rights at the bottom but I believe, as
25 Mr. Counts testified to, those are on all those statement

1 forms. The body of the statement contains no rights that
2 were given to Mr. Cox. And the people that were taking that
3 statement were different from the people that were present
4 when the waiver of rights was given. Therefore, I don't
5 think that it has been shown, nor can it be contended that
6 the people that were present, in fact, believe that Mr. Cox
7 had been given his rights at six thirty-five p.m.

8 Also, there has been testimony to show that the
9 statement was not signed by Mr. Cox until two days later, May
10 12th. There was no indication that there were any rights
11 given on May 12th to Mr. Cox.

12 I think just the nature of the fact that there were
13 some people locked up, they were later released after the
14 statement was given, and the fact that there is no indication
15 in the body of the statement that Mr. Cox was given his
16 rights would indicate the statement was not voluntary, and
17 should be thrown out.

18 THE COURT: Mr. Childs.

19 MR. CHILDS: Your Honor, I think it is clear from the
20 testimony that no deal was struck. All the inmates were
21 locked up pursuant to this. The alleged release of these
22 other inmates was eventually effected because they caught the
23 culprit, and these other inmates were suspects.

24 He was clearly given his rights at 6:01, he waived his
25 rights and, at that time, in the Waiver of Rights, he signed

1 that he understood that he had the right to stop answering at
2 any time. Custody was transferred, but that doesn't affect
3 the waiver of rights, and the individuals who questioned him
4 were aware that he had already waived his rights.

5 There was no threats or coercion. The different
6 people taking the statements, I don't feel, impacts whatsoever
7 on the waiver of rights. He waived his rights, he knew that
8 he could stop at any time, and, certainly, he's familiar with
9 his rights, not only because of that, but because he has been
10 in trouble before and, certainly, he is aware of them because
11 of that.

12 The State would submit it was a knowing and intelligent
13 waiver of rights. Clearly, the first statement, the oral
14 statement was made to those he waived his rights to. The
15 second statement was made to those that were aware he had
16 waived his rights, and the third statement simply confirmed
17 the transcription of the tape of the second statement and he
18 was still aware at that time that he didn't have to sign,
19 that he could stop at any time.

20 I feel like all his rights were protected and he
21 waived those rights.

22 MR. RAY: Your Honor, one issue that hasn't been
23 addressed is that the statement of Mr. Gossett, the other
24 prisoner, I think there is sufficient testimony from Mr.
25 Gossett himself to indicate that his statement, which would

1 indicate some guilt of a suspected degree, on Mr. Cox's
2 behalf as to an admission was a result of promises to get him
3 transferred to McCormick because there was some type of
4 contract on his life and he wanted to get out of there, and
5 didn't want to be in Perry. I think there's a showing there
6 that that statement or admission would be tainted as such,
7 also.

8 THE COURT: Is there something, Mr. Cox, you want to
9 say?

10 THE DEFENDANT: At the time when I was in L-Building
11 with Mr. Minyard and Brown, before Mr. Brown took my statement
12 he got on the phone to Chief Brock. I told Mr. Brown at
13 that time that I would answer no questions, no further
14 questions---

15 THE COURT: Now, if you want to testify, you're going
16 to have to come around up here. I can't just let you talk
17 without being---

18 THE DEFENDANT: You see, I need J. J. Brown here.
19 J. J. Brown is the only one that heard or is willing to--
20 he told me before that he would not lie on me up here like
21 everybody else has so far about not hearing nothing, this,
22 that and the other. But J. J. told me, and Mr. Thompson
23 heard some of what he said, that he would not lie on me,
24 that he would tell them what happened, you know, what he
25 heard about the statement. He is an important part of

1 what was said.

2 THE COURT: All right, I'm going to rule on this
3 after lunch. Let's break until one-thirty.

4 (Whereupon, the lunch recess was taken.)
5
6

7 AFTERNOON SESSION 1:30 p.m.

8 THE COURT: Mr. Ray, with respect to the motion to
9 suppress the statement allegedly made by the Defendant to
10 Mr. Gossett, I find the State has met its burden of proving
11 it's admissibility under the Constitutional standards.

12 With respect to the motion to suppress statements
13 allegedly made to the law enforcement officers, or officers
14 of the Department of Corrections, the Defendant, in addition
15 to other grounds, contends that he is without a witness
16 necessary to establish his case. Now, to its inadmissi-
17 bility, this witness was not subpoenaed. The Officers
18 have testified as to a different rendition of the request
19 for the officer to be present for trial. Nevertheless, I
20 have asked that this Officer Brown be located. He is on
21 military duty in Florida. It is my understanding that he
22 has been located and will call in this afternoon. At that
23 time we will break the trial to see what he has to say about
24 this matter, but we are going to proceed ahead now with the
25 trial.

1 THE DEFENDANT: Judge Traxler.

2 THE COURT: Yes, sir.

3 THE DEFENDANT: Can I say something?

4 THE COURT: Yes, sir.

5 THE DEFENDANT: I have not had time to-- this morning
6 when I come over here was the first time that I talked to
7 this man at all. I come over here, I didn't even talk to
8 him when we went in and pulled the jury. I've had no time
9 to talk to him to set no kind of defense, to talk to him
10 in no kind of matters about this hearing. I would like to
11 get a postponement on this hearing to give me adequate time
12 to set up a proper defense. He has not done nothing, I mean,
13 you know, nothing has been done.

14 THE COURT: How long have you been representing him,
15 Mr. Ray?

16 THE DEFENDANT: The first time I seen him was the
17 16th of July at the preliminary hearing.

18 MR. RAY: Your Honor, I have been representing him a
19 couple of months. I have been at Perry since the preliminary
20 hearing, and I talked to him at the preliminary hearing.
21 Since then I have had complete access to the Solicitor's
22 file and have copies of it in my file. If he wants to talk
23 more now, that's fine with me.

24 MR. CHILDS: Your Honor, I would also add that we
25 had notified the defense attorney of a trial date certain

1 on this trial for today, we notified him several weeks
2 before today, I believe. A few days after the preliminary
3 hearing we notified him that today was going to be the trial.

4 THE DEFENDANT: They notified me Friday afternoon
5 at four o'clock, told me that I'd be here today. From
6 Friday until today does not give me ample time to set up
7 no kind of defense.

8 THE COURT: Okay, the motion is noted and denied.

9 The testimony of Officer Brown, that the Defendant
10 wants, is pertinent to the taped, and subsequently written,
11 statement taken by Officer Brown and Officer Millwood. It
12 does not pertain to the alleged first oral statement given
13 to other officers, Officer Brock and another officer. There-
14 fore, I can rule with respect to the oral statements,
15 allegedly made to Officer Brock. With regard to them, I
16 find the State has proven-- met its burden of proof with
17 regard to showing the admissibility of these statements.
18 I specifically find the State has proven that the defendant
19 was first given an explanation of his Miranda rights before
20 making a statement, that he fully understood the warnings,
21 and that he knowingly and voluntarily elected to waive his
22 rights. I further find the State has proven-- met its
23 burden of proof that the statement was made, and that it
24 was made freely and voluntarily under the totality of the
25 circumstances, and it meets all Constitutional requirements

1 and safeguards.

2 THE DEFENDANT: The Miranda warning was not voluntary.

3 THE COURT: Bring the jury in.

4 THE DEFENDANT: I would like to dismiss this Public
5 Defender, Your Honor, and handle my own case.

6 THE COURT: Hold the jury.

7 Mr. Cox, what is it?

8 THE DEFENDANT: I want to dismiss the Public Defender
9 because I feel he is inadequate to me. He has done nothing
10 so far. I can handle-- I know more about the case than he
11 knows. I can see if he had been out and talked to me, or
12 done some kind of research on the case, but nothing has been
13 done. I come up here and get shot through like a slingshot,
14 in this courtroom, it's a great disadvantage.

15 THE COURT: You want to represent yourself rather
16 than have an experienced attorney represent you?

17 THE DEFENDANT: I'd like to represent myself. I need
18 time to prepare my case to represent myself.

19 THE COURT: Well, you're not going to get any more
20 time. What I need to know, I mean, the trial is going to
21 proceed today and what I need to know is whether or not you
22 want this attorney, Mr. Ray, to continue to represent you.

23 THE DEFENDANT: What I need him to represent me for?
24 He don't know nothin' about the case.

25 THE COURT: You want to represent yourself and make

1 an opening statement yourself, and question the witnesses
2 yourself?

3 THE DEFENDANT: He just wants to walk in here and
4 talk to me for two or three minutes, and then shoot me in
5 front of a jury trial. I talked to nobody until I come up
6 here this morning. Y'all want to bring me up here and talk
7 to me for two or three minutes. I didn't even talk to him
8 before we went in to pull the jury. I still haven't talked
9 to him 'side what I told him in here to tell what's on the
10 stand. He wouldn't knowed what to ask them people on the
11 stand if I hadn't told him out here. He don't know what's
12 going on with the case. What it comes up to is a great
13 injustice, is what is being carried on in this courtroom
14 today in my point of view, a great incarriage of justice,
15 miscarriage.

16 THE COURT: Do you want to represent yourself, or do
17 you want Mr. Ray to continue to represent you? He is an
18 experienced trial attorney, he knows what he is doing, he's
19 been through the Solicitor's file.

20 THE DEFENDANT: If he wants to represent me, then give
21 me permission to sign a waiver, and let them take me on back
22 to Perry, and y'all continue this jury trial without me
23 'cause that's what it's adding up to. I ain't got no say-so,
24 I ain't got no kind of defense. Y'all just go ahead and
25 find me guilty and give me the thirty years, and let it go

1 at that. That's what it comes up to.

2 THE COURT: If you want, we'll take a break now and
3 you can talk to him some more.

4 THE DEFENDANT: I'd like to take a break and sign a
5 paper, some sort of waiver.

6 THE COURT: We can't do that. Do you want some time
7 to talk to your lawyer.

8 THE DEFENDANT: What good is ten or fifteen minutes
9 gonna do.

10 THE COURT: I'll give you an hour. Do you want an
11 hour?

12 THE DEFENDANT: It ain't gonna do no good.

13 THE COURT: Now, is it all right with you if Mr. Ray
14 continues on and makes opening statement and cross-examines
15 the witnesses on your behalf?

16 THE DEFENDANT: He can do what he wants to 'cause I
17 ain't cooperating with him, I'll tell you that right now.

18 THE COURT: Okay, bring the jury in.

19 (The jury was brought into the courtroom and given the
20 oath by the Clerk.)

21 THE COURT: All right, Mr. Childs.

22 (An opening statements were made by the Solicitor and
23 Mr. Ray. No objections were taken.)

24 THE COURT: All right, Mr. Childs.

25 MR. CHILDS: The State would call James R. Sewell

1 to the stand.

2 MR. RAY: Your Honor, at this time I would ask that
3 anybody that expects to testify, or the State intends to call,
4 be sequestered.

5 THE COURT: All right. Witnesses are sequestered.
6 Anybody that is testifying in the trial has to go outside
7 until they are called to testify.

8 MR. CHILDS: Your Honor, I would ask that my chief
9 investigator, Mr. Counts, remain.

10 THE COURT: The Chief Investigator can remain.

11 JAMES R. SEWELL

12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 Q. (By Mr. Childs) Okay, Mr. Sewell, where are you
15 employed?

16 A. Perry Correctional Institute.

17 Q. How long have you been employed there?

18 A. I've been employed going on eight years.

19 MR. RAY: Your Honor, may he approach the bench?

20 THE COURT: Yes, sir.

21 (Colloquy was had at the bench outside the hearing of
22 the Reporter.)

23 Q. - (Mr. Childs) How long did you say you had been
24 working at Perry?

25 A. Going on eight years.

1 Q. Okay, what are your duties there?

2 A. I'm a First Shift Supervisor, Medium Security.

3 Q. Were you working there this year during the month of
4 May?

5 A. Yes, I was.

6 Q. Let me direct your attention to May 10th, were you
7 working on that day?

8 A. Yes, I was.

9 Q. What were your duties on that day?

10 A. My duties more or less-- well, I'm the First Shift
11 Supervisor of the whole Medium side, on weekends especially.
12 The whole area is my responsibility.

13 Q. Do you remember what day of the week May 10th was?

14 A. If I'm not mistaken, it was on a Sunday.

15 Q. All right, what time did you come in to work that day?

16 A. Eight a.m.

17 Q. What kind of shift did you work?

18 A. Well, the normal shift is eight to four. On this day I
19 think I left about eleven that night.

20 Q. Was Officer Peaks working that day?

21 A. Yes, sir, he was.

22 Q. Well, what area was Officer Peaks working in, are you
23 aware of that?

24 A. Yes, he was assigned to Q-1-A Wing.

25 Q. And where was that in relation to where you were working

1 that day?

2 A. Well, like I said, I've got responsibility for the whole
3 area but at the time of this incident I was in the visiting
4 room.

5 Q. Let me then direct your attention to that afternoon
6 about three o'clock, what, if anything, happened about that
7 time?

8 A. Yes, sir, at approximately three o'clock, I heard an
9 emergency call come over the radio that I had an officer down
10 in Q1A Wing. As I responded to the call, once I arrived, I
11 got there to observe Officer Peeks lying on the Rock, what we
12 call "The Rock". That's like a place where they sit there
13 and play cards, and all, for the inmates. C. O. Inman was
14 standing over him. As I approached, I seen a long metal,
15 homemade shank sticking out of his right side.

16 Q. Okay, let me show you what's been marked State's Exhibit
17 No. 1, are you able to identify this object?

18 A. Yes, sir, with the tape missing-- in other words, this
19 weapon here was stuck in Officer Peeks' side. However, it
20 had white tape wrapped around it for a handle.

21 Q. It is different now in that it had white tape wrapped
22 around it. And this was sticking in Mr. Beeks' side?

23 A. In his right side next to the rib cage, underneath his
24 armpit.

25 Q. What kind of white tape was wrapped around it?

1 A. Just white masking tape.

2 Q. This is the regular kind of masking tape that you or I
3 would use from the hardware store?

4 A. Yes, sir.

5 Q. Let me show you what's marked State's Exhibit No. 2.
6 Without this blue powder on it, does that appear to you to be
7 the same white masking tape that was on that?

8 A. Yes, sir, it does.

9 Q. Do you know what that blue powder is?

10 A. Yes, sir, that's where we sent the shank to SLED for
11 fingerprints and all. That's the type powder used to check
12 for fingerprints.

13 Q. Okay, and this tape was wrapped around this knife?

14 A. Yes, sir, it was approximately a four-inch handle made
15 with tape.

16 Q. Which was in Mr. Peeks' side when you approached the
17 scene?

18 A. Yes, sir.

19 MR. CHILDS: I would move this into evidence at this
20 time, Your Honor.

21 Any objection?

22 MR. RAY: No objection.

23 THE COURT: Without objection.

24 (The Shank and Tape, marked
25 State's Ex. No. 1 & No. 2 were
received in evidence.)

1 Q. (By Mr. Childs) After you got to Mr. Peeks and saw this
2 in his side, what did you do after that?

3 A. Well, I immediately notified our Main Control Room,
4 which is a post where we have two officers to relay messages
5 and check our security zone, and such as that, from within
6 the institution. I immediately notified them to notify EMS
7 'cause I knew he was seriously hurt.

8 Q. How did you know that?

9 A. Like I said, sir, I've been with the Department going on
10 eight years and I've seen a lot of stuff since I've been
11 there. And the type shank that is, I knew it was at least
12 fifteen inches long because we find that type shank a lot.
13 And the position it was in in Mr. Peek's side, I knew he was
14 serious hurt. So, the first thing I did was notify EMS,
15 and then notified my Assistant Supervisor to close the yard.

16 Q. Why would you close the yard?

17 A. Sir, the main reason for that is anytime you have a
18 major incident, you want to close the yard and get all the
19 inmates locked into their cells because you've already got
20 one serious incident, and you don't need to have another one,
21 therefore, you put all of them in their cells and you have
22 less chance of another incident happening.

23 Q. Did Officer Peek indicate an area which this assailant
24 may have come from?

25 A. Yes, sir, I asked him did he see who did it, or which

1 direction he may have went in, and he told me he went in the
2 direction between Rooms 104 and 105.

3 Q. Okay, and what did you do as a result of that
4 information?

5 A. Well, nothing at that point because my main concern at
6 that point was to stabilize the weapon that was stuck in his
7 side because he had started to hurt and was trying to reach
8 and get the weapon out of his side. And at this time there
9 was no blood coming from Mr. Peeks due to the weapon remaining
10 in his side, but I knew if he pulled the weapon out, he would
11 possibly bleed to death. So, I secured the weapon in his
12 side while they continued to close the yard.

13 At that time he started giving me a description of this
14 individual. He told me it was a white male, approximately
15 six foot tall with kinda long, curly hair, and that he went
16 in the direction between 101 and 105.

17 Q. All right, are you familiar with Inmate Paul Leslie Cox?

18 A. Yes, sir.

19 Q. Is that him?

20 A. Yes, it is.

21 Q. Seated over there. Well, where is his cell?

22 A. At that time Inmate Cox lived in 104.

23 Q. After that conversation with Mr. Peeks, what happened
24 after that?

25 A. At that point the On-Call Duty Officer, which was Chief

1 Riley, he arrived on the scene, and I give him the description
2 that Mr. Peeks had gave me. All right, when he arrived, the
3 yard was still in the process of being closed, and then I
4 would say approximately fifteen minutes from the time that I
5 notified my patrol to call EMS, they arrived approximately
6 fifteen minutes later. So, they were in the process of
7 coming in, and other inmates were being taken off the yard
8 and placed in their cell.

9 So, I stayed with Officer Peeks while my other
10 officers were closing the yard, myself and C. O. Inman.
11 He had already given a description of the suspect, so I was
12 watching all inmates who came in the wing. Something that
13 caught my attention was when Inmate Cox entered the wing, he
14 kinda fit the description that I had and what really caught
15 my attention to him or what I really picked up on was, usually,
16 when something like this happens, all the inmates want to see
17 what's happening. but when he entered, he just kinda looked
18 the other way and went on to his cell. Then, I observed him
19 go in Cell 104, which at the time was where he lived.

20 Q. Okay, and that was the area that Officer Peeks had
21 indicated the assailant went to?

22 A. Yes, sir, between 101 and 105.

23 Q. Following that, what happened after that?

24 A. Well, at that time Chief Riley along with, I think, C. O.
25 Minyard and Inman, started pulling inmates from the cells

1 that kinda fit this description for C. O. Peek to possibly
2 to identify. We pulled approximately seven to eight inmates
3 out. Chief Riley, along with C. O. Inman approached C. O.
4 Peek, who was lying on the floor, brought Inmate Cox up to
5 him and Chief Riley asked C. O. Peek was this him, you know,
6 could this be the one. C. O. Peek looked up and said,
7 "That's him." And then Inmate Cox started saying something.
8 Chief Riley asked C. O. Peek again if that was him? In my
9 personal opinion at that time---

10 THE COURT: No, you can't---

11 Q. (Mr. Childs) Don't give your personal opinion. What
12 did the physical condition appear to be of Officer Peek at
13 that time?

14 A. At that time he was fixing to go into shock. He started
15 jerking and his eyes kinda rolled around like he was fixing
16 to pass out on him.

17 Q. Then what did he indicate?

18 A. He nodded his head no.

19 Q. He just nodded his head?

20 A. That's all I heard, yes.

21 Q. You say at that point he was getting shocky, is that
22 right?

23 A. Yes, sir.

24 Q. After that, what happened?

25 A. After that the rest of the yard was closed and all the

1 inmates were placed in their cells. In other words, all the
2 inmates were placed in their cells and EMS took Officer Peeks
3 to the hospital.

4 Q. Did you have any further involvement with this case
5 after that?

6 A. No, sir.

7 MR. CHILDS: Okay, please answer any questions Mr. Ray
8 might have. Just one minute.

9 Q. (Mr. Childs) Is Perry Correctional located in Green-
10 ville County?

11 A. Yes, sir.

12 MR. CHILDS: Okay, Officer, answer any questions Bob
13 Ray may have.

14 CROSS EXAMINATION

15 Q. (By Mr. Ray) Officer Sewell, what time of day did all
16 this happen?

17 A. Approximately, three p.m.

18 Q. And did you see Officer Peeks get stabbed?

19 A. No, sir, I didn't.

20 Q. And when you got to Officer Peeks, how long had it been
21 since he had been stabbed, do you know?

22 A. I would say, approximately, less than five minutes.

23 Q. How many other officers were there?

24 A. When I arrived there were three officers on the wing
25 itself.

1 Q. Who were those officers?

2 A. Officer Inman, Officer Long, and my Assistant Supervisor
3 James DeOley.

4 Q. James who?

5 A. DeOley.

6 Q. Now, how many people were put in holding cells as a
7 result of this incident? Was Leroy Abernathy put in the
8 holding cell?

9 A. Sir, I'm not really sure because I remained on the yard
10 to keep down tension or further problems. In other words,
11 administrative people, Chief Brock and Riley, were taking
12 care of that business.

13 Q. Were some individuals, approximately four, put in
14 holding cells that were suspected of doing this?

15 A. Yes, they were.

16 Q. Was Paul Cox one of those individuals?

17 A. Sir, like I said, I remained on the yard. Inmates were
18 filtering back and forth to Operations, which that is normal
19 in a case like this. In a serious case, you know, inmates--

20 Q. If you would, answer my question. Was Mr. Cox put in
21 a holding cell because he was suspected of stabbing Officer
22 Peeks?

23 A. At the time of this-- approximately three p.m.?

24 Q. Yes.

25 A. No, he was not.

- 1 Q. But some others were?
- 2 A. Not at three p.m., no, they weren't.
- 3 Q. Shortly after the incident, some other people were put
- 4 in holding cells, is that correct?
- 5 A. That's correct.
- 6 Q. And Mr. Cox was not one of those people?
- 7 A. I can't say either way 'cause I'm not sure.
- 8 Q. All right, how many people were in the room at the time
- 9 Officer Peeks was stabbed, do you know?
- 10 A. Inmates included?
- 11 Q. Uh-huh.
- 12 A. I can't really say because I was not there.
- 13 Q. Was it fifty?
- 14 A. I can't say.
- 15 Q. Could it have been fifty?
- 16 A. It could have been, yes, sir.
- 17 Q. Could it have been more than that?
- 18 A. Could have been more than that.
- 19 Q. All right, when you got to Officer Peeks, who was lying
- 20 there, you said he was about to go into shock?
- 21 A. Yes, sir.
- 22 Q. Are you saying that he definitely identified Mr. Cox as
- 23 the assailant or not?
- 24 A. At first he did, yes.
- 25 Q. Did he identify some other people as the assailant?

1 A. No, he did not.

2 Q. Did he tell you something about somebody having a
3 tattoo on their arm?

4 A. I do not recall anything about a tattoo.

5 Q. You don't remember that?

6 A. No, sir, I don't. I was not told anything about a
7 tattoo.

8 Q. Did he tell you something about a hat, that the
9 assailant had on a hat, burgandy hat?

10 A. As I recall, he did mention something about a cap,
11 baseball type cap, burgandy.

12 Q. That the assailant had on a cap. And how many minutes
13 transpired between the time you got there and when he passed
14 out?

15 A. He never really passed out because EMS arrived and, you
16 know, put the oxygen and all that stuff on him.

17 Q. All right.

18 A. So, to my recollection, he never did pass out, you
19 know, completely go out.

20 Q. And are you telling this jury that he identified Paul
21 Cox as his assailant, or not?

22 A. Yes, he did.

23 Q. Did he identify anybody else?

24 A. No, he did not.

25 Q. What about the people that had been put in the holding

1 cells?

2 A. Those people were brought up to him while, you know, he
3 was laying on the floor there, and he stated "No," when Chief
4 Riley and others brought them up.

5 Q. He said, "No"?

6 A. Right.

7 Q. Who were those people? Were you there when that
8 happened?

9 A. Yes, I was. I can't recall all the names 'cause, like
10 I said, I had so many things going at one time but Inmate
11 Wesley Gerald was one, Roger Johnson, Leroy Abernathy.

12 Q. Mr. Cobb?

13 A. No, sir, William Cobb was already in the holding cell
14 for a prior incident.

15 Q. But all those other people were brought up?

16 A. Yes, sir.

17 Q. Did Officer Peek ever state that the assailant was not
18 Paul Cox?

19 A. Like I said, when asked the first time, you know, when
20 Chief Riley brought Inmate Cox up to C. O. Peeks, he looked
21 up and said, "That's him."

22 Q. Did he ever state, though, that that was not him?

23 A. Yes, he was asked again was that him.

24 Q. And he said, "No"?

25 A. All that I observed was him nod his head "No."

1 Q. All right, so that was the second response?

2 A. Yes, sir.

3 Q. Was "No, that's not him"?

4 A. Was nodding of the head, right.

5 Q. Was he doing any talking?

6 A. You're speaking of-- Officer Peeks?

7 Q. Officer Peeks, right, or just nodding his head?

8 A. No, he nodded his head no. The only thing he said to
9 me prior to that he was having difficulty breathing.

10 Q. All right.

11 A. He said he felt like he was going to pass out and he
12 couldn't breathe.

13 Q. The last response or communication that he made was
14 that Mr. Cox was not the one that stabbed him?

15 A. Right, a nodding of the head no.

16 MR. RAY: All right.

17 MR. CHILDS: Just a few more questions, Your Honor.

18 REDIRECT EXAMINATION

19 Q. (By Mr. Childs) You say he was nodding his head. Do
20 you know what he meant by that?

21 A. No, sir, I did not.

22 Q. But you clearly heard him say "That's him"?

23 A. Right, when he was first brought up.

24 Q. Let me show you this once again (Indicating Ex. #1).
25 Is this contraband?

1 A. Yes, it is.

2 Q. How do you know that?

3 A. Well, these rods are used for various maintenance
4 reasons but when they are filed to a point like this, it
5 becomes a weapon.

6 Q. Okay, are there signs and policies about that at the
7 Correction Facility?

8 A. Yes, sir, it is, all inmates has an Inmate Guide which
9 tells them the rules and regulations within the Department of
10 Corrections.

11 Q. And this is against the rules?

12 A. Yes, it is.

13 Q. And are there conspicuous signs about having homemade,
14 weapons?

15 A. I don't really know if you speak of them as signs, but
16 like I say, you have your Inmate Guide.

17 Q. Are there large signs on the entrance when you go in
18 there?

19 A. Oh, yes, sir.

20 Q. Do they say that those kind of items are contraband?

21 A. Yes, it does.

22 MR. CHILDS: That's all I would have of this witness.

23 THE COURT: Anything further, Mr. Ray?

24 MR. RAY: Nothing further, Your Honor.

25 (The witness was excused.)

1 MR. CHILDS: I would next call Robin L. Inman.

2 ROBIN L. INMAN

3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 Q. (By Mr. Childs) Officer Inman, how are you employed?

6 A. I am employed as a Correction Officer at the Perry
7 Correction Center.

8 Q. How long have you been employed as such?

9 A. Four years.

10 Q. Were you in law enforcement before then?

11 A. I did a short time at Pickens County Sheriff Department.

12 Q. Were you employed back in May of this year as a
13 Correctional Officer?

14 A. Yes, sir, I was.

15 Q. Let me direct your attention to May 10th of this year,
16 do you recall anything unusual happening that day?

17 A. Yes, sir, we have what we call a 1033, which means an
18 officer has been assaulted on the yard, to which I responded.

19 Q. Where were you when you got that call?

20 A. I was in Operations.

21 Q. About what time was it?

22 A. It was approximately three, three-thirty in the after-
23 noon, somewhere in there, middle of the afternoon.

24 Q. What did you do as a result of that call?

25 A. Well, I proceeded to the area where the disturbance was.

1 Q. What did you see when you got there?

2 A. I saw C. O. Peek's lying on the floor with a shank
3 sticking out of his right side. And Officer Long was
4 kneeling over him there on The Rock.

5 Q. What was his condition at that time?

6 A. He appeared to be quite pale, and had a kind of glazed
7 look on his eyes.

8 Q. What do you mean by a "shank", is that something you
9 hear in the Correctional Facility, or what is that?

10 A. This is what we refer to as a homemade knife, or a
11 weapon of some sort.

12 Q. Did you see that shank yourself, sticking in Mr. Peek's?

13 A. Yes, sir, I did.

14 Q. Let me show you this object, marked State's Ex. No. 1,
15 can you identify this?

16 A. Well, that appears to be the same size as what I saw
17 sticking out of Officer Peek's, except it had a handle
18 made out of masking tape.

19 Q. So, it looks different now?

20 A. Yes, sir, it looks different.

21 Q. This is the kind of masking tape you're talking about
22 except for that blue powder?

23 A. Yes, sir.

24 Q. So, this appears to you to be the same item?

25 A. Yes, sir, it does.

1 Q. How far was it stuck in Officer Peeks?

2 A. Well, there was approximately three inches exposed,
3 three to three and a half inches exposed, coming out of his
4 lower back on an upward angle.

5 Q. To this corroded area here?

6 A. Yes, sir, that appears to be about right.

7 Q. What did you do after you saw Officer Peeks in that
8 condition?

9 A. Well, I immediately moved to clear the area of any
10 unnecessary personnel, and I asked Officer Peeks, you know,
11 how he -- you know, what had happened, who had done it, and
12 he said to me that it was some one with dark hair and a
13 moustache, dark moustache.

14 Q. Did he indicate what area the assailant went to after
15 the attack?

16 A. He indicated the portion of the dorm, the lower portion
17 of the dorm, exact opposite of the entrance.

18 Q. Okay, are you familiar with Inmate Paul Cox?

19 A. Yes, sir, I am.

20 Q. Is that him seated over here?

21 A. Yes, sir, it is.

22 Q. Is he in the white shirt, the Coca Cola shirt?

23 A. Yes, sir, he is.

24 Q. Where was he, where was his cell at that time?

25 A. His cell was in that area that was indicated by Officer

1 Peeks.

2 Q. Okay, what happened after, what happened as far as the
3 inmates were concerned after you received this information
4 about where the assailant went?

5 A. Well, we proceeded to, I'd say, round up any possible
6 suspects and brought them up to Officer Peeks, who was still
7 prone on the Rock, for possible identification.

8 Q. And did they bring inmates up to him, in fact?

9 A. Yes, sir, they did-- I did.

10 Q. Can you describe to us who they brought up?

11 A. Well, I was only involved with one of them. I brought
12 one inmate that matched the clothing description but he
13 indicated that he was not the one.

14 Q. Was that Inmate Cox?

15 A. No, sir.

16 Q. Then, what did you do after that?

17 A. I joined a number of other officers in clearing the
18 yard.

19 Q. Why did y'all clear the yard?

20 A. Well, to avoid any further complications during this
21 incident.

22 Q. And did you have any further dealings with this case
23 after that?

24 A. No, sir, I was helping maintain security on the yard
25 for the rest of the time.

1 MR. CHILDS: Thank you very much. Please answer any
2 questions Mr. Ray may have.

3 CROSS EXAMINATION

4 Q. (By Mr. Ray) Officer Inman, you said that when you
5 got to Mr. Peek's he was lying on the ground and the only
6 other officer that was there was Officer Long, is that
7 correct?

8 A. Officer Long was leaning over him, yes, sir, he was
9 assigned on the other wing.

10 Q. There were no other officers there?

11 A. Well, Officer Willie Brown, myself, Assistant Supervisor
12 DeOley entered the dorm approximately the same time and then
13 Mr. Sewell was right behind us.

14 Q. All right, when some one is pointed out as having
15 committed a crime on the yard, is it standard procedure to
16 lock up that person immediately?

17 A. Any time that an inmate is suspected of some violent
18 attack, or any type of activity which could cause some one to
19 be endangered, it is standard procedure to segregate them
20 from the population.

21 Q. Why, then, was Paul Cox not segregated from the
22 population, why was it three other people were put in the
23 holding cell?

24 A. Sir, I had nothing to do with the decision-making
25 process. I can only witness to what I know.

1 Q. Is it true that the assailant was said to have a tattoo
2 on his arm, is that correct?

3 A. I don't have any knowledge of this.

4 Q. What about the fact that the assailant was said to have
5 a beard?

6 A. I recall hearing something about facial hair, dark,
7 you know, a moustache, I don't recall.

8 Q. A beard?

9 A. A beard, no, sir.

10 Q. Is it possible that it was said the assailant had a
11 beard?

12 A. Sir, anything is possible.

13 Q. And how many people would you say were present,
14 roughly, within ten, at the time you arrived there, how
15 many people were there, inmates, officers?

16 A. I couldn't really say. My focus was on the
17 immediate area surrounding Officer Beeks.

18 Q. Roughly, how many people?

19 A. There are approximately ninety people living on that
20 wing, so there could have been a hundred people there. I
21 don't think there were. I know there weren't a hundred on
22 the rock, maybe twenty.

23 MR. RAY: That's all.

24 MR. CHILDS: Thank you.

25 (The witness was excused.)

1 MR. CHILDS: The State would call Andrew L. Riley.

2 ANDREW L. RILEY

3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 Q. (By Mr. Childs) Officer Riley, are you also employed
6 at Perry Correctional?

7 A. Yes, sir.

8 Q. How long have you been working there?

9 A. I've been working at Perry since February of '81 when
10 they opened. I've been with the Department a total of twelve
11 years.

12 Q. Okay, and are you familiar with the Department Policy
13 and all the regulations in regard to contraband in the
14 prison?

15 A. Yes, sir.

16 Q. Okay, let me show you this item and ask you whether or
17 not possession of this item is against the regulations there?

18 A. Yes, it is.

19 Q. What is that?

20 A. This is what we term a home-made shank, some kind of
21 metal, iron, wood, that is sharpened to be used as a device
22 to harm some other person.

23 Q. It's like an ice pick or something?

24 A. Yes, sir, it looks like it may have come off a mop
25 handle or something. I really don't know what it came off of.

1 Q. Have you ever seen this before?

2 A. I really can't say because when the incident that we're
3 talking about, I did not see the shank itself because a
4 certain amount of it was in the side of Officer Peeks with
5 the handle wrapped, and I can't say that that was it, but I
6 do know that I seen that much of metal that was the same size
7 as that.

8 Q. I believe it was wrapped in tape?

9 A. Yes, sir.

10 Q. What day was it that you saw that?

11 A. This was on a Sunday, on May 10th.

12 Q. Tell us about how you saw that, how did this whole
13 incident unfold as far as you are concerned?

14 A. My responsibility on that day was the on-call person
15 for the institution, and I received a message that an officer
16 was down in Q-1. I responded to Q-1 to find Officer Peeks
17 laying on what we call The Rock, a concrete surface within
18 the living area, on his back with a shank stuck in his right
19 side. I immediately had the security officers to start
20 locking each inmate in their individual cells. I left Q-1
21 to go back to the medical section to bring a nurse down to
22 check on Mr. Peeks.

23 Q. Why did you start locking the prisoners up?

24 A. Officer Peeks was laying on what we term The Rock and
25 it's a concrete area where the inmates gather around tables

1 and play cards, and just lounge around and do different
2 things. The reason the inmates were locked within their
3 individual cells was because of the nature of the incident,
4 an officer had been stabbed at that time. I did not know
5 anything involving the incident and to prevent any further
6 incident and to secure Officer Peeks' safety, is the reason
7 each inmate was locked in their living cell.

8 Q. Okay, you said you went to go get a nurse, do you
9 remember what nurse you went and got?

10 A. I remember her face but I can't remember her name right
11 now, I don't remember which one was on duty that particular
12 Sunday.

13 Q. Was it Tallulah Tipton?

14 A. Yes, I think so.

15 Q. What did you and her do after you went and got her?

16 A. I escorted her from the medical section back down to
17 Q-1 where Officer Peeks was, and she began taking his blood
18 pressure and other vital signs, and at that time EMS had
19 already been called, and she continued to do whatever she did
20 medically to Officer Peeks until EMS arrived.

21 Q. Now, while she was doing that, what were you doing?

22 A. After she had started to work with Officer Peeks,
23 Officer Peeks mentioned that the inmate that had stabbed him
24 lived-- he was laying on his back and pointed directly in
25 front of him and said, "In that area." And at that time

1 Officer Peek's gave a description of the inmate that he said
2 had stabbed him, which I can't remember. I didn't write it
3 down and I can't remember at this present time specifically
4 how Officer Peek's described him, but I do remember the dark
5 hair, moustache, shoulder length hair, white male, and that is
6 what we was going by, pulling inmates to be brought out to
7 the Rock where Officer Peek's was laying for him to identify.

8 Q. All right, are you familiar with Inmate Paul Cox?

9 A. Yes, sir.

10 Q. Is that him seated over there next to his attorney?

11 A. Yes, sir.

12 Q. All right, what area does he stay in there at the
13 correctional facility?

14 A. Inmate Cox stayed in the same area that Officer Peek's
15 had mentioned that the inmate lived in.

16 Q. Okay, does he match the general description given to you
17 by Officer Peek's?

18 A. Yes, sir.

19 MR. RAY: Your Honor, I'm object to the leading
20 questions.

21 THE COURT: Yes, sir, don't lead him.

22 Q. (Mr. Childs) What did you do after you receive this
23 information from Officer Peek's?

24 A. Okay, we have what we call a "Bottom Tier," and a "Top
25 Tier," where inmates live. And each individual door was

1 closed, and we went cell to cell, looking and trying to pull
2 the inmate that resembled the description that Officer Peeks
3 had given us. And I don't know for sure, I'm going to say
4 someone that told seven, eight, nine total inmates was
5 pulled and brought out to the Rock where Officer Peeks was
6 laying. And each inmate that was brought out, which I don't
7 remember the number that Inmate Cox was brought out, but
8 it was inmates brought out before he was and after he was.
9 And Officer Peeks looked up at Inmate Cox and said, "That's
10 the one."

11 In a very rude tone of voice, Inmate Cox said something
12 to the effect, and I quote from Officer Peeks, "He's the
13 one." And when Officer Peeks said, "He's the one,"
14 Inmate Cox looked at him in a rude tone of voice, said, "You
15 don't know what you're talking about." And I told him to
16 shut up and he did quieten down, and Officer Peeks looked up
17 again and said "That's not him." And he was put back in
18 his cell.

19 Q. Did he say those actual words?

20 A. Yes, sir.

21 Q. Now, following that, what did you do?

22 A. After that, we have four living areas, I stayed within
23 the living area with Officer Peeks until EMS had done their
24 work on him, stabilized the shank that was in him, and loaded
25 him in the ambulance to take him to the Emergency Room.

1 After the ambulance left with Officer Peek, we again went
2 from cell to cell, trying to get a better-- to see if any one
3 else fit a closer description of the inmate that Officer
4 Peek had described. And at that time, due to the incident--
5 we have a total of four living dorms that inmates live in and
6 inmates was reluctant to go to their cells in the other
7 living areas, and each inmate, which is a total of, say,
8 seven hundred inmates, roughly, I guess, I don't really know
9 the actual count that particular day, but each inmate needs
10 to be locked within their cells due to the fact that the
11 majority of the security personnel was in the area where the
12 incident took place. And by this time, other administrative
13 people had reported to the institution where I went up to the
14 Administration Building to give them what little information
15 that I had, which I just shared with you, and I went back to
16 the yard area to help the officers secure the remaining dorms.
17 And after all the dorms were secured, I don't know how much
18 time had elapsed, but that's when Chief Brock called me to
19 the Administration Building, that he needed to see me.

20 Q. . Okay, what did you do after that?

21 A. When I came up, Mr. Brock was in the Briefing Room of
22 the institution which is used to brief the security staff
23 prior to their going to their post assignment. Chief Brock
24 informed me that Inmate Cox wanted to make a statement. And
25 when I went back, Mr. Brock had a Waiver of Rights form that

1 he read to Inmate Cox, asked him did he understand it, and--

2 Q. Let me stop you right there. Let me show you what's
3 been marked State's Exhibit No. 3. Is that what you're
4 referring to?

5 A. Yes, sir.

6 Q. Okay, and what, if anything, did y'all do with that
7 form there?

8 A. Sir?

9 Q. What was done with that form?

10 A. All right, this form here was read by Chief Brock
11 to Inmate Cox.

12 THE COURT: Your objection continues.

13 MR. RAY: Thank you.

14 THE COURT: Go ahead.

15 A. (The witness) And my sole purpose, basically, at that
16 time for being called up by Chief Brock was to be a witness
17 for what was being taken place at that time.

18 Q. Okay, did he verbally read that form to Inmate Cox?

19 A. Yes, he did. And he also asked him did he understand
20 the form, which Inmate Cox said yes, that he knew his rights.
21 And at the same time Chief Brock asked Inmate Cox if he
22 wanted to read it, and Inmate Cox said no, he didn't, that he
23 knew his rights.

24 Q. Okay, did he sign that form?

25 A. Yes, sir.

1 Q. And that's the individual seated over there?

2 A. Yes, sir.

3 Q. Okay, did you threaten him or coerce him in any way to
4 get him to sign that?

5 A. No, sir.

6 Q. Did he appear to you to understand what he was doing?

7 A. Yes, sir.

8 MR. CHILDS: Your Honor, I would move this into
9 evidence.

10 THE COURT: It is admitted over the Defendant's
11 objection.

12 (The Rights Form, previously
13 marked State's Ex. No. 3 was
received in evidence.)

14 Q. (Mr. Childs) After he signed this Waiver of Rights,
15 what, if anything, did the defendant tell you?

16 A. Inmate Cox went on to state that he was the one that
17 stabbed Officer Peeks, and at that time I stated to Inmate
18 Cox that I didn't think he did it. And Inmate Cox said,
19 "Yes, I did." He went on to say how he---

20 Q. Let me stop you, why did you say that?

21 A. Sir?

22 Q. Why did you say that to Inmate Cox?

23 A. Because I didn't think he did it.

24 Q. Okay, what was the basis of that?

25 A. Because-- well, really because I've been knowing

1 Inmate Cox and what happened was, I just wanted to feel out
2 why he was coming up voluntarily to say he did it.

3 Q. Okay.

4 A. Just to see what type of response that he would give
5 me, all right. And after I made that statement to Inmate
6 Cox, he said, "Yes, he did." He went on to say how he
7 walked up behind him and how he had stabbed him, he came
8 down. He also stated to me that he -- and I asked him why he
9 did it, and he stated that he just got fed up with it, he was
10 just fed up with everything, always being shook down, and
11 this is his person being shook down, or his room. And he
12 also pulled his pants pocket out and it had two holes in it.
13 that he said the shank had made in his pocket, and he had
14 been toting the shank around for a couple of days and that
15 was why the holes was in his pocket, right pocket.

16 Q. Officer Riley, can you identify these pants?

17 A. Yes, sir.

18 Q. What are they?

19 A. Those are the bluejeans that Inmate Cox had on.

20 Q. Okay, and you indicated he showed you some holes in
21 the pocket, which pocket was that?

22 A. Right pocket.

23 Q. And what was his explanation for these?

24 A. He said that's where he had been toting the shank for,
25 I think he said, two days, and the shank had made the holes

1 in his pocket.

2 MR. CHILDS: Your Honor, I move to have these admitted
3 into evidence.

4 THE COURT: Yes, without objection.

5 (The Blue Jeans referred to were
6 marked State's Ex. No. 4 and
received in evidence.)

7 Q. (Mr. Childs) All right, following that conversation,
8 did he tell you anything more?

9 A. Sir?

10 Q. Did he tell you anything more?

11 A. Basically, that was the extent of the conversation.

12 Q. Where is Perry Correctional located?

13 A. It's located at Route 3, Pelzer, South Carolina, off of
14 Oaklawn Road.

15 Q. What county is that in?

16 A. It's in Greenville County.

17 Q. As far as this rod is concerned, is this-- will you
18 tell us whether or not this is contraband?

19 A. That's contraband, yes, sir.

20 Q. Are inmates given some kind of guidance in regard to
21 possessing items like that?

22 A. Yes, sir, it is spelled out in the Inmate Guide, which
23 Inmate Cox should have signed it, saying he had received a
24 copy.

25 Q. On your way into Perry, is there any other indications

1 about having contraband when you enter the place?

2 A. It's a sign posted for visitors pertaining to contra-
3 band, and what the consequences will be if contraband is
4 found.

5 Q. Okay, and those are for the inmates to see, also, when
6 they come in?

7 A. Well, the inmates can read it, yes.

8 MR. CHILDS: I believe that's all the questions I
9 have. Please answer any questions Mr. Ray may have.

10 CROSS EXAMINATION

11 Q. (By Mr. Ray) Officer Riley, you told Paul Cox you
12 didn't think he did it?

13 A. I made that statement, yes.

14 Q. Is that because you believe that he was taking the rap
15 for somebody else?

16 A. Not necessarily that he was taking the rap for somebody
17 else but I wanted to satisfy myself that he knew what he was
18 stating.

19 Q. Did you think he might be taking the rap for somebody
20 else?

21 A. Not at that time because I didn't have any idea who had
22 did it.

23 Q. But there were some other people put in holding
24 cells that were suspected of doing this, is that correct?

25 A. Yes, sir.

1 Q. What description did Officer Peeks give you of the
2 assailant?

3 A. Officer Peeks stated that the inmate was white, had
4 dark hair, shoulder length, and a moustache, and, basically,
5 that-- he may have went farther but that's all I can remember
6 from the incident.

7 Q. Did he say he had a beard?

8 A. Sir?

9 Q. Did he say he had a beard?

10 A. I remember him saying a moustache that come out over
11 his lip. I don't remember whether he said a beard or not.

12 Q. Did Paul Cox, in fact, have a beard at that time?

13 A. Yes, I believe he did.

14 Q. And what Officer Peeks described was somebody that did
15 not have a beard but a moustache?

16 A. What I'm saying is Mr. Peeks described the person as
17 having a moustache. I can't remember him saying one way or
18 the other whether he had a beard.

19 Q. But Mr. Cox did have a beard?

20 A. Yes, sir, I believe he did, I'm not sure.

21 Q. What did Officer-- first of all, who else was standing
22 there with you? Was Officer Long there?

23 A. Yes, sir.

24 Q. Was Officer Inman there?

25 A. Yes, sir.

- 1 Q. Was Officer DeOley there?
- 2 A. Yes, sir.
- 3 Q. Was Officer Sewell there?
- 4 A. Yes, sir.
- 5 Q. And you're saying now that Officer Peeks is talking, is
- 6 that correct?
- 7 A. Yes, sir.
- 8 Q. If somebody else said he was just nodding his head,
- 9 would that surprise you?
- 10 A. Yes, sir, because he made the statement to me that
- 11 "That's him." He had to speak to say that.
- 12 Q. That "That's him," but then he said, "That's not him,"
- 13 isn't that right?
- 14 A. Yes, sir, so he was talking.
- 15 Q. He was talking about it, and if somebody else said he
- 16 was just nodding his head, they'd be wrong?
- 17 A. Who is "somebody else"?
- 18 Q. Somebody else that's already testified.
- 19 A. Well, I can't attest to that. I can say I was there.
- 20 I heard Mr. Peeks speak. I talked back and forth with him
- 21 because I asked him several times how he was doing.
- 22 Q. Okay. Now, in the discussion about where the assailant
- 23 lives, how is it that Officer Peeks would know where his
- 24 assailant lived?
- 25 A. Let me rephrase that then. Not necessarily where the

1 assailant lived, but in the area that he went when he had
2 stabbed Officer Peaks, not necessarily that he lived right
3 there. He went in that area.

4 Q. But is it not true that there was about ninety people
5 out there in this particular area at that time?

6 A. No, sir, it won't hold that many.

7 Q. How many was out there?

8 A. I can't tell you how many was there 'cause, see, this
9 is during the day and they have access to go in and out of
10 the building, so I can't really tell you how many people was
11 there because I wasn't there.

12 Q. But there was more than twenty there?

13 A. I don't have any idea.

14 Q. You don't have any idea?

15 A. I mean, what I'm saying, how many was there around
16 Officer Peaks, or how many was actually in that building at
17 the particular time, I don't know.

18 Q. I'm talking about the greater area, people that had
19 access, walking access to where Officer Peaks was?

20 A. It could have been anybody that lived in the building.
21 I'm saying I don't know how many was there.

22 Q. Why does-- Officer Peaks was on the floor, right?

23 A. Yes, sir.

24 Q. And there were people standing around him, is that
25 correct?

1 A. When I arrive, Mr. Sewell, Mr. DeOley, Mr. Inman;
2 there was not any inmates.

3 Q. The officers were there?

4 A. Yes, sir.

5 Q. But at the time the stabbing took place, there was
6 inmates there?

7 A. I'll have to say I'm sure it was, but I can't say
8 because I wasn't there.

9 Q. What I'm saying is that Officer Peeks is on the floor.
10 How does he know the assailant left the area of the stabbing?

11 MR. CHILDS: Objection, Your Honor, this witness has
12 testified he wasn't there when it happened.

13 THE COURT: He doesn't know what Officer Peeks knew.

14 MR. RAY: I'm trying to establish-- Officer Peeks,
15 according to Officer Riley here testified that the assailant
16 lived in a certain area, evidently, and then Officer Riley
17 testified that what he meant by that was he went to a certain
18 area after the attack. What I'm trying to establish is
19 couldn't the person have gone in a different direction?
20 Officer Peeks was on the floor.

21 THE COURT: Go ahead.

22 A. (The witness) In other words, the answer to your
23 question was Officer Peeks informed me that the inmate that
24 had stabbed him went in the area right in front of him. That
25 is the area we concentrated on. I took Officer Peeks at his

1 word that he saw the inmate go that way.

2 Q. (Mr. Ray) All right, but what would keep that person
3 from leaving that area and coming back out and going some-
4 where else, like out in the yard somewhere?

5 A. What would keep him from staying there, that's some-
6 thing neither one of us knows.

7 Q. All right, so, he could have left that area, the
8 attacker, is that true?

9 A. I don't know. The building was sealed off immediately
10 after the incident, no inmates were allowed to leave the
11 building or come in the building.

12 Q. But the attacker could have changed directions after
13 all--

14 A. I can't answer that.

15 Q. I mean, he could have, though?

16 A. I still can't say he did, though.

17 Q. I'm not asking you if he did because you don't know
18 that. He could have?

19 A. Well, he could have. Anything could have happened.
20 I'm telling you what I know.

21 Q. Now, this tape that's in the evidence bag here, do you
22 know if that was tested for fingerprints?

23 A. No, sir, I had no dealings with the shank at all
24 because the EMS taped it and stabilized it, and they didn't
25 even attempt to move it. And it was taken inside of Officer

1 Peeks to the hospital.

2 Q. There's been a pair of pants put in evidence here. Was
3 there any kind of scientific analysis done on these pants, do
4 you know?

5 A. I have no knowledge of that. That was turned over to
6 the Investigator.

7 Q. Did you hear certain promises made to Mr. Cox to get
8 him to sign that Waiver of Rights?

9 A. I am not aware of any promises to Inmate Cox to sign
10 the statement for any reason. I was informed by Chief Brock
11 that Inmate Cox had voluntarily came up and wanted to make
12 the statement.

13 Q. So, in other words, the answer is "No," you didn't know
14 about any promises?

15 A. No, sir, I have no knowledge.

16 MR. RAY: That's all.

17 MR. CHILDS: That's all the questions I have.

18 (The witness was excused.)

19 THE COURT: Madam Forelady, Ladies and Gentlemen, we
20 are going to take a break now. While you're back in your
21 jury room do not begin discussing the case. Don't talk about
22 this case, talk about something else, and we'll send for you
23 in a little bit.

24 (The jury retired from the courtroom, and a recess was
25 taken.)

1 THE COURT: Do you want to ~~put on the record~~ now
2 your position with regard to the tape and transcription?

3 MR. CHILDS: Yes, Your Honor, I'm just going to
4 withdraw the tape and the transcription at this time. I think
5 we have sufficient evidence with the other information and
6 that relieves us of any question about Officer Brown being
7 here or not because he was not involved-- he was only
8 involved in the second statement and the other officers who
9 were involved in the first statement have already testified.

10 THE COURT: All right.

11 MR. RAY: Your Honor, if I can get it clear then,
12 so what's going to stay in is the waiver that was signed at
13 six p.m. on May 10th will stay in?

14 THE COURT: Yes, sir.

15 MR. CHILDS: And the oral statement at that time.

16 THE DEFENDANT: The waiver of my rights-- when I
17 talked to Chief Brock, that was also part-- I signed that
18 and it was not voluntary.

19 THE COURT: No, sir, you did not testify. You can
20 offer testimony before the jury when the time comes if you
21 wish.

22 THE COURT: Are you ready to go?

23 MR. CHILDS: Yes, sir.

24 THE COURT: Bring the jury.

25 (The jury was brought into the courtroom.)

1 MR. CHILDS: We call Tallulah Tipton.

2 TALLULAH TIPTON

3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 Q. (Mr. Childs) Mrs. Tipton, please speak up for us into
6 that microphone.

7 A. Okay.

8 Q. Where are you employed?

9 A. Perry Correctional Institute.

10 Q. Okay, how are you employed there?

11 A. I'm a Registered Nurse.

12 Q. What are your duties there as a Registered Nurse?

13 A. We have clinic duties, emergency care, that type thing.

14 Q. How long have you been a Registered Nurse?

15 A. Since 1982.

16 Q. Were you working there at Perry Correctional on May 10,
17 of this year?

18 A. Yes, sir, I was.

19 Q. Anything unusual happen that day?

20 A. Yes, sir, I received a call to come down to the yard,
21 that they had an emergency down there.

22 Q. What was the emergency?

23 A. An Officer had been stabbed.

24 Q. Do you remember what officer

25 A. Officer Peeks.

- 1 Q. Please tell the jury what happened after you got there?
- 2 A. When I arrived in the dorm where the officer was, he
- 3 was lying on the floor and he had a shank in his back.
- 4 Q. Okay, I'd like to show you what's been marked as
- 5 State's Exhibit No. 1, can you identify this?
- 6 A. Yes, sir, that appears to be the same type of shank.
- 7 Q. Okay, what is different about this shank than what you
- 8 saw that day?
- 9 A. Okay, the shank was embedded in the officer and it had
- 10 tape on the upper portion of it.
- 11 Q. What kind of tape was that?
- 12 A. It looked like masking tape.
- 13 Q. Except for this blue powder, does this appear to be the
- 14 same tape that was on the shank that day?
- 15 A. Yes, sir.
- 16 Q. How far in was this shank going?
- 17 A. There was no way that I could tell how far.
- 18 Q. How much of the top was shown, will you show up please?
- 19 A. With the tape and all, I guess it was that much
- 20 (Indicating).
- 21 Q. And the rest of that was in Officer Peeks?
- 22 A. Uh-huh.
- 23 Q. What did you do after you saw what condition he was in?
- 24 A. Well, I monitored his vital signs.
- 25 Q. What were his vital signs?

1 A. I can't recall the exact values, but they were
2 abnormal.

3 Q. What do you mean by "abnormal"?

4 A. His blood pressure was low, his pulse was up.

5 Q. And what did that indicate to you?

6 A. It would indicate shock.

7 Q. Were you there-- what other officers were there when
8 you got there?

9 A. There were several officers, I really don't recall
10 which ones.

11 Q. Were you there when they brought inmates by?

12 A. Yes, sir, I was.

13 Q. You remember that?

14 A. Yes, sir, I don't remember which ones they brought by
15 but I remember they brought several by.

16 Q. Do you remember them bringing that inmate who is over
17 there(indicating the defendant)?

18 A. No, sir, I don't recall.

19 Q. Okay, was Officer Peek's lucid or was he losing
20 consciousness or how was he?

21 A. No, he was talking very lucid.

22 Q. Did he later on get worse, or --?

23 A. No, sir. What he said to me was that he was feeling
24 nauseated, but he stayed lucid throughout the whole time that
25 I was there.

- 1 Q. Okay, and did the EMS later come on the scene?
- 2 A. Yes, they did.
- 3 Q. What did they do?
- 4 A. They immediately started an I.V. and got him ready to
- 5 transport.
- 6 Q. Did they keep the shank in or how was that handled?
- 7 A. They left the shank in and stabilized it so it wouldn't
- 8 move.
- 9 Q. Why did they do that?
- 10 A. Why did they do that?
- 11 Q. Why did you leave it in?
- 12 A. Oh, well, you wouldn't want to pull it out 'cause it
- 13 comes--
- 14 Q. What would happen if you had pulled it out?
- 15 A. He would have started profuse bleeding.
- 16 Q. Okay, and you said that already his blood pressure was
- 17 low?
- 18 A. Uh-huh.
- 19 Q. How would you term his condition when you got there?
- 20 A. When I first got there?
- 21 Q. Yes.
- 22 A. I determined that he was starting to go in shock.
- 23 Q. And that's all the dealings you had in regard to this
- 24 incident?
- 25 A. Right.

1 MR. CHILDS: Thank you. Answer any questions Mr. Ray
2 may have.

3 CROSS EXAMINATION

4 Q. (By Mr. Ray) Ms. Tipton, did you talk to Officer
5 Peeks?

6 A. Yes, sir, I did.

7 Q. He was talking?

8 A. Talking to me, yes, sir.

9 Q. Was he talking to other officers?

10 A. Yes, sir.

11 Q. Was all of his communication done through talking, or
12 was he shaking his head, or---

13 A. I can't recall if he shook his head or not.

14 MR. RAY: That's all I have.

15 (The witness was excused.)

16 MR. CHILDS: My next witness will be Thomas Millwood.

17 THOMAS MILLWOOD

18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 Q. (Mr. Childs) Mr. Millwood where are you employed?

21 A. The Department of Corrections.

22 Q. How long have you been with them?

23 A. Three years.

24 Q. Where do you work presently?

25 A. I am a Contraband Officer.

- 1 Q. What facility do you work at?
- 2 A. Perry.
- 3 Q. Is that in Greenville County?
- 4 A. Yes, sir.
- 5 Q. As a Contraband Officer, are there certain rules and
- 6 regulations for contraband within a prison system?
- 7 A. Anything that's not allowed that inmates can buy in
- 8 the canteen.
- 9 Q. That's contraband?
- 10 A. Yes, sir.
- 11 Q. Can you tell us whether or not this is contraband?
- 12 A. Yes, sir.
- 13 Q. Are there warnings posted about these items?
- 14 A. Yes, sir.
- 15 Q. Are there warnings posted about these item?
- 16 A. Yes, sir.
- 17 Q. And you couldn't purchase this in the canteen?
- 18 A. No, sir.
- 19 Q. So, it's against your regulations to have this item
- 20 here?
- 21 A. Yes, sir, any type weapon.
- 22 Q. Are there conspicuous signs posted in regards to
- 23 possession of contraband when you enter the facility?
- 24 A. Yes, sir.
- 25 Q. And do those signs warn against having such items as

1 this?

2 A. Yes, sir.

3 Q. Now, I would ask you with regard to where you were
4 employed in May of this year?

5 A. At Perry.

6 Q. Do you remember May 10th of this year?

7 A. Yes, sir. That was on a Sunday, I was called in--
8 I got the phone call about four o'clock.

9 Q. You came into the facility at that time?

10 A. Yes, sir, I got there between quarter till and five
11 o'clock.

12 Q. Okay, did you see Officer Peaks at all?

13 A. No, sir.

14 Q. Did you see Inmate Cox at all?

15 A. Later on that evening I did, sir.

16 Q. Did you have the occasion later on that evening--
17 well, could you identify this item for us?

18 A. A pair of pants Mr. Cox had on.

19 Q. Are you the officer who took these pants off of him?

20 A. Yes, sir.

21 Q. Do you have anything else that you took off of him?

22 A. I had a pair of undershorts.

23 MR. CHILDS: Please mark these for identification.

24 (The Shorts referred to were
25 marked State's Ex. No. 5 for
identification.)

1 Q. (Mr. Childs) Officer, I show you what's been marked
2 for identification Exhibit 5.
3 A. Yes, sir.
4 Q. What is that?
5 A. Boxer shorts.
6 Q. Where did you get those?
7 A. Mr. Cox had them on.
8 Q. That afternoon of May 10th?
9 A. That night, that evening, yes, sir.
10 Q. What, if anything, is unusual about those shorts?
11 A. Holes in the front of it.
12 Q. Would you step down and show the jury where those holes
13 are?
14 A. (The witness went down in front of the jury, and
15 returned to the stand.)
16 Q. Okay, and that be a person that wears the pants, their
17 right side?
18 A. Yes, sir.
19 Q. What, if anything, was unusual about these pants you
20 discovered?
21 A. The holes in the right front pocket.
22 Q. Approximately, how long after you got there did you
23 take these items off of Inmate Cox?
24 A. It was about, maybe, three hours and fifteen minutes
25 or so, three hours and a half, something like that.

1 Q. Okay, do you know what the prison term is for this
2 object here?

3 A. It's a shank, it's a homemade knife.

4 Q. Do you know what it is used for?

5 A. Yes, sir.

6 Q. What is it used for?

7 A. For sticking somebody.

8 MR. CHILDS: Thank you, answer any questions Mr. Ray
9 may have.

10 CROSS EXAMINATION

11 Q. (By Mr. Ray) Officer Millwood, were you involved in
12 the search for Officer Peaks' assailant?

13 A. I guess you would say so, after I got there.

14 Q. You were involved-- what was the description of this
15 assailant?

16 A. Sir, I don't have any idea. When I got there, they
17 just said an officer had been shanked, and for me to go down
18 on the yard and try to find out any information I could.

19 Q. Did they say they were looking for somebody with a
20 beard?

21 A. They just said a white suspect with curly hair.

22 Q. White suspect with curly hair?

23 A. Yes, sir.

24 Q. They didn't say that he had a beard?

25 A. No, sir.

- 1 Q. Were you familiar with Paul Cox at the time?
- 2 A. I knowed Paul when he was at the institution before.
- 3 Q. Did he have a beard at that time?
- 4 A. Matter of fact, I think he did, sir.
- 5 Q. They were looking for somebody with a tattoo on their
- 6 arm, weren't they?
- 7 A. I have no idea, sir.
- 8 Q. You don't remember that?
- 9 A. No, sir.
- 10 Q. Did Mr. Cox have a tattoo on his arm?
- 11 A. I don't think so.
- 12 Q. Were you there when Officer Peek made any statements
- 13 about his assailant?
- 14 A. No, sir.
- 15 Q. Did you remove these items of clothing from Mr. Cox?
- 16 A. I didn't remove them, he removed them himself, but I
- 17 asked him to let me have them.
- 18 Q. How do you know these are the same?
- 19 A. Because they've been in my custody ever since he took
- 20 them off, sir.
- 21 Q. What-- you've been carrying them around with you?
- 22 A. They were in our locked-up office.
- 23 Q. In your locked-up office?
- 24 A. Yes, sir.
- 25 Q. Where was it in your locked-up office?

1 A. Inside of another locked door. There's nobody but
2 three people that have access to that room.

3 Q. Well, did you put these items in any kind of container
4 or bag, or anything?

5 A. They were in a paper bag with Mr. Cox's name on it.

6 Q. Is it similar to the bag you had them in?

7 A. That is the bag, sir.

8 Q. Who wrote "Paul Cox" on that?

9 A. I did.

10 Q. You wrote "Paul Cox" on the bag. Did you seal the bag?

11 A. I folded it down.

12 Q. You folded it down and you locked it in some secure
13 place, is that right?

14 A. Yes, sir.

15 Q. Have you looked at this shank?

16 A. Yes, sir.

17 Q. Is that the shank that was in Officer Peeks?

18 A. Yes, sir.

19 Q. How do you know?

20 A. Because it was removed at the hospital, put in a bag,
21 and I carried it to SLED.

22 Q. So, this is the same shank that was in him?

23 A. Yes, sir.

24 Q. What you're saying is these holes in these pants and
25 this underwear were made by this shank, is that what you're

1 saying?

2 A. It was made by a shank.

3 Q. Made by a shank. How do you know that? How many

4 people in prison have shanks?

5 A. Just about everybody.

6 Q. Almost everybody?

7 A. Yes, sir.

8 Q. Where do they get them from?

9 A. They make them, buy them.

10 Q. Buy them?

11 A. Yes, sir.

12 Q. Is there a store where you go get them?

13 A. No, sir.

14 Q. Where do they buy them from?

15 A. They buy them illegal out of the maintenance shop.

16 Q. Out of the maintenance shop?

17 A. Yes, sir.

18 Q. Have you noticed that this shank, the one you said

19 stabbed Officer Peek, is bigger than the holes in the pants

20 you said you took off of Paul Cox?

21 A. Are bigger?

22 Q. That's right, the shank is bigger than the holes that

23 are in the pants, have you noticed that?

24 A. No, sir.

25 Q. So, what you're saying is that some shank made these

1 holes but you don't know if this shank made those holes?

2 A. No, sir. All I know is that Mr. Cox said that that was
3 the pants and showed me the holes that he was carrying the
4 shank and he described that shank to me that he had carried
5 in his pocket for two days.

6 Q. Well, did you keep this-- you said you kept this in
7 the same place where you kept the pants?

8 A. No, sir, I did not. That has been at SLED in Columbia.

9 Q. SLED in Columbia?

10 A. Yes, sir.

11 Q. And nobody thought to check and see if this shank is
12 the same width as these holes in these clothes, have they?

13 A. I haven't.

14 Q. Well, it's not. Did you take this tape off of that
15 shank?

16 A. No, sir, I did not.

17 Q. You did not?

18 A. No, sir.

19 Q. Do you know if that tape was tested for fingerprints?

20 A. Yes, sir.

21 Q. What did it show?

22 A. Didn't show any fingerprints, sir.

23 Q. No fingerprints. Would you think that something that
24 was taped on a shank like this would leave fingerprints if
25 you were holding it?

1 A. Sir, I have no idea. On any evidence we have, if
2 we're going to court with them, we take it to SLED, drugs,
3 shanks or whatever.

4 Q. And you say everybody's got a shank. Why don't you go
5 get the shanks from everybody, why don't you go take the
6 shanks off of the inmates?

7 A. Sir, they have twenty-four hours a day to find places
8 to hide them and we don't work but eight hours a day.

9 Q. Well, the guards don't carry shanks, do they?

10 A. No, sir.

11 Q. I guess you have to have a shank to survive, is that
12 right?

13 A. If you say so.

14 Q. Did you get around Officer Peeks when he was laying
15 there on the floor at any time?

16 A. Sir, I was not even in the institution when Mr. Peeks
17 was laying in the floor.

18 MR. RAY: All right, thank you.

19 MR. CHILDS: Brief redirect, Your Honor.

20 REDIRECT EXAMINATION

21 Q. (By Mr. Childs) Officer Millwood, does it appear that
22 hole is smaller than the shank?

23 A. No, sir.

24 MR. RAY: Your Honor, I'm going to object to the
25 Solicitor pushing the shank through the hole and making it

1 larger.

2 MR. CHILDS: I haven't pushed it, Your Honor.

3 THE COURT: Well, the jury can see for itself, they
4 don't need testimony.

5 Q. (Mr. Childs) Let me just hold it up next to these
6 holes. Does it appear this shank could be pushed through
7 that hole (holding up the shorts)?

8 A. Yes, sir.

9 MR. CHILDS: That's all the questions I have.

10 (The witness was excused.)

11 MR. CHILDS: The State would call Ralph Gossett.

12 RALPH GOSSETT

13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 Q. (By Mr. Childs) Mr. Gossett, where are you from?

16 A. Spartanburg.

17 Q. Okay, where are you presently staying?

18 A. McCormick Correctional Institution.

19 Q. What are you doing in McCormick?

20 A. Time.

21 Q. What are you doing time for?

22 A. Two rapes and armed robbery.

23 Q. Back in May of this year, were you incarcerated in
24 Perry Correctional?

25 A. Yes, sir.

- 1 Q. Who was your roommate there?
- 2 A. Paul Cox.
- 3 Q. What was your cell number?
- 4 A. Q-1A104.
- 5 Q. Take you back to May 10th of this year-- let me take
- 6 you back to May 9th, was Paul Cox your roommate at that time?
- 7 A. Yes, sir.
- 8 Q. On that day what, if anything, unusual did you talk
- 9 about on May 9th?
- 10 A. (No response.)
- 11 Q. Strike that question. Can you identify this item?
- 12 A. Yes, sir.
- 13 Q. What is this?
- 14 A. It's a shank.
- 15 Q. And do you know whose shank this is?
- 16 A. Paul Cox.
- 17 Q. How do you know that?
- 18 A. I knowed it from he had it in the room.
- 19 Q. How is it different--- is it different now?
- 20 A. Well, the handle part where the tape was, been taken
- 21 off.
- 22 Q. Okay, is this the kind of tape that was on the handle?
- 23 A. Yes, sir.
- 24 Q. Was it a different color then?
- 25 A. Yes, sir, it was brown, tan brown,

1 Q. Regular masking tape?

2 A. Yes, sir.

3 Q. Did you and Mr. Cox on May 9th have any conversation
4 about this?

5 A. Well, it had been talk that there was gonna be, you
6 know, a stabbing of an inmate.

7 Q. Who was talking about that?

8 A. Paul Cox.

9 Q. Who was he talking about stabbing?

10 A. Well, the inmate's name was Bobby Brewster.

11 Q. Did he talk about stabbing anybody else?

12 A. Yes, sir.

13 Q. Who was that?

14 A. Officers.

15 Q. Just any officer or what officer was he talking about?

16 A. Leeke.

17 Q. Leeke? Would that be Officer Peek?

18 A. Peek.

19 Q. And that was May 9th that he talked to you about that?

20 A. Yes, sir.

21 Q. And do you recall May 10th?

22 A. The officer gotten stabbed?

23 Q. Yes.

24 A. Yes, sir.

25 Q. What were you doing that day?

1 A. Well, I'd just gotten off of work, and I was laying
2 down sleeping. I worked in the kitchen on the first shift
3 and you have to get up pretty early to cook breakfast, and
4 while I was asleep I was awakened by a commotion that was
5 going on outside.

6 Q. About what time was that?

7 A. I don't really recall.

8 Q. Was it in the afternoon?

9 A. Afternoon. And I had looked up and the TV was turned
10 on and, you know, there was a basketball game on, and usually
11 when some type of sport is on TV, you know, there's usually a
12 big commotion going on between the inmates, you know. If
13 their team makes a point, you know, they get very rowdy,
14 and I figured, you know, from the hollering that was probably
15 what it was about. And when I rolled over and tried to go
16 back to sleep, I couldn't sleep so I decided to get up and go
17 outside. When I got up and combed my hair and put my shoes
18 on, I was gonna go out, but I'd seen, you know, realized that
19 the door was on lock down.

20 Q. What does that mean?

21 A. Well, they're either gonna have a big shakedown or
22 a riot is breaking out, or a big fight, or something.

23 Q. What happened after that?

24 A. I'd looked outside and I seen an officer was laying
25 on the concrete, which we call The Rock, and I just said,

1 "Oh, well," you know, and I really didn't realize who the
2 officer was at the time, because Mr. Sewell was over there
3 with him. And I was just sitting there, watching. I went
4 back over to my bunk and sat down and they had called every-
5 body back to their dorm, and Paul come down. I'd asked him,
6 you know, I asked what happened. He told me that he had
7 stabbed the officer.

8 Q. That's what he said to you in your own words?

9 A. Yes, sir.

10 Q. What else did he say about that?

11 A. I don't know if I can use the language or not. Just,
12 you know, a couple of bad words, said, "I got the s.o.b."
13 You want me to say the word?

14 Q. That's good enough. Let me ask you this. Can you
15 identify these?

16 A. Yes, sir.

17 Q. What are these?

18 A. Pants.

19 Q. Do you know whose they are?

20 A. They belong to Paul.

21 Q. How do you know that?

22 A. The paint on the front.

23 Q. The paint on the front, that's how you remember these
24 are Paul Cox's?

25 A. Yes, sir.

1 Q. Have you ever seen him carry a shank?

2 A. Not really carry one. I know it had been in the room.
3 Our locker is laying long ways, hooked up to the wall, and
4 on the locker door we had it at the end where we had set the
5 TV up in the corner.

6 Q. You had it hid there?

7 A. It was put up under it.

8 Q. Do you know how he carried his shank?

9 A. No, sir.

10 Q. Did you ever see that shank after this day?

11 A. No, sir.

12 Q. It wasn't in your hiding place any more?

13 A. No. When they had went out, when they had took us
14 outside, the only thing I could see was where the handle was
15 sticking out of the officer.

16 Q. So, you saw this very same shank sticking out of the
17 officer's back?

18 A. Yes, sir, from the handle.

19 Q. Now you're down in McCormick?

20 A. Yes, sir.

21 Q. And why were you transferred to McCormick?

22 A. Well, I had signed-- when they come around interviewing
23 people to go down to McCormick, 'cause it was a brand new
24 institution, and it's my understanding that the Warden there
25 came down to go over the first people or whatever-- well, the
first few people was handpicked, hand chosen, you know.

1 What the man had told me when he had came down to interview
2 us was, you know, the first people that was gonna be there
3 wasn't gonna have any kind of bad record.

4 Q. Let me just cut you short. Were you on the list to go
5 to McCormick before this incident happened?

6 A. Yes, sir.

7 Q. Did they transfer you to McCormick because you were
8 willing to come up here and testify today?

9 A. No, sir.

10 Q. When is your parole date?

11 A. '94 or '96.

12 Q. Have they commuted your sentence, or have we promised
13 to reduce your sentence, or do anything for you in exchange
14 for you testifying here today?

15 A. No, sir.

16 Q. Now, you are telling us the truth about this being Paul
17 Cox's shank?

18 A. Yes, sir.

19 Q. Okay, you're telling us the truth about him telling you
20 that he stabbed the guard?

21 A. Yes, sir.

22 MR. CHILDS: Please answer any questions Mr. Ray may
23 have:

24 CROSS EXAMINATION

25 Q. (By Mr. Ray) Mr. Gossett, isn't it true there was a

1 contract out on your life in Perry by the two women that you
2 raped?

3 A. Yes, sir, allegedly raped.

4 Q. Sir?

5 A. Allegedly had raped.

6 Q. Allegedly raped?

7 A. Yes, sir.

8 Q. Did you plead guilty to that?

9 A. Yes, sir, plea bargain.

10 Q. You pled guilty?

11 A. Yes, sir.

12 Q. Would you rather be in Perry or in McCormick?

13 A. I like it over in McCormick, it's a new institution,
14 everybody's got their own room, air conditioning.

15 Q. A little bit safer down in McCormick?

16 A. It's dangerous in any institution you go to.

17 Q. Is it a little safer in McCormick?

18 A. I guess.

19 Q. If you had your choice, where would you be?

20 A. I'd like to be at McCormick.

21 Q. Now, you're telling this jury that you knew this
22 shank was in your cell, is that right?

23 A. Yes, sir.

24 Q. And it had some brown masking tape around the handle,
25 is that right?

- 1 A. Yes, sir.
- 2 Q. But it was in your cell, and that on this Sunday
- 3 afternoon you were sleeping so you could get up and cook
- 4 breakfast?
- 5 A. Yes, sir. I wasn't the cook here, I just worked there
- 6 in the mornings.
- 7 Q. In the mornings?
- 8 A. Yes, sir, I worked out in the dining hall, the dining
- 9 area, but I had to be there at five o'clock.
- 10 Q. Had to be at work to cook breakfast at five o'clock?
- 11 A. I don't cook, I cleaned the tables.
- 12 Q. Cleaned the tables?
- 13 A. Yes, sir.
- 14 Q. Had to be there at five o'clock in the morning?
- 15 A. Yes, sir.
- 16 Q. But you were asleep at three o'clock in the afternoon?
- 17 A. Yes, sir.
- 18 Q. That's five a.m. but you were asleep at three p.m., is
- 19 that right?
- 20 A. Yes, sir.
- 21 Q. How long had you been asleep?
- 22 A. I had laid down right after I had gotten off work.
- 23 Q. What time did you get off work?
- 24 A. Twelve, or eleven-thirty.
- 25 Q. You were gonna sleep from about twelve o'clock until

1 five in the morning?

2 A. No, sir, I was just tired and went in and laid down,
3 watching a little TV. and fell off to sleep.

4 Q. Did you have a shank of your own?

5 A. No, sir.

6 Q. Do you have a shank in McCormick?

7 A. No, sir.

8 Q. Do a lot of people have shanks?

9 A. A few.

10 Q. A few?

11 A. Yes, sir.

12 Q. Would you be surprised that an officer said that most
13 everybody had a shank?

14 A. It wouldn't really surprise me because it's an institu-
15 tion, but as far as, you know, that I had seen, just a few
16 people.

17 Q. Just a few people had them?

18 A. Yes, sir.

19 Q. And you never had a shank?

20 A. No, sir.

21 Q. And you weren't around Officer Peeks when he got
22 stabbed, were you?

23 A. I wasn't awake at the time.

24 Q. You were asleep?

25 A. Yes, sir.

1 Q. Could you have walked out to where he got stabbed if
2 you had wanted to?

3 A. No, sir.

4 Q. Why not?

5 A. The door was locked.

6 Q. What door was locked?

7 A. The door to my room.

8 Q. The door to your room?

9 A. Yes, sir.

10 Q. You mean the cell door was locked?

11 A. Yes, sir.

12 Q. Why was it locked?

13 A. Evidently because the officer got stabbed. They locked
14 everybody down that was in there.

15 Q. I'm talking about before they found out he got stabbed,
16 I'm talking about when he got stabbed, was the door locked
17 then?

18 A. No, sir, not to my knowledge.

19 Q. So, you could have gone out there?

20 A. Yes, sir.

21 Q. Have you ever made the statement that Paul Cox talks a
22 lot?

23 A. Yes.

24 Q. Do y'all take him seriously?

25 A. Yes, sir.

1 Q. And you said that he told you that he was gonna stab
2 Officer Leeke, is that right?

3 A. Yes, sir.

4 Q. Did you know Officer Leeke?

5 A. Not personally.

6 Q. Did Paul Cox know Officer Leeke?

7 A. I don't know.

8 Q. Why would he do that?

9 A. Well, as far as I knew, the officer was new, to my
10 knowledge, and I heard that, you know, that he just had a bad
11 name with the inmates. I don't really know for sure, though.

12 Q. You say these were Paul Cox's (indicating the pants)?

13 A. Yes.

14 Q. How do you know that?

15 A. The paint right there on the front leg.

16 Q. Paint on the front leg?

17 A. Yes, sir.

18 Q. That's how you know they were his?

19 A. Yes, sir. I'd seen him wear them a lot.

20 Q. Does everybody in jail get their own pair of blue
21 jeans?

22 A. Yes, sir.

23 Q. How do you know that shank wasn't under the TV after
24 Officer Peek got stabbed, I mean, Leeke, I'm sorry, how do
25 you know that shank wasn't under the TV?

1 A. Well, when they had locked everybody down and brung
2 Paul and them back to the rooms, they come down to our cell
3 first and took us out in front of the officer.

4 Q. Took you out in front of the officer?

5 A. Took both of us out in front of the officer.

6 Q. They didn't suspect you, did they?

7 A. No, sir.

8 Q. Are you sure?

9 A. Yes, sir.

10 Q. You wouldn't come into court and not tell the truth,
11 would you?

12 A. Excuse me?

13 Q. You'd tell the truth if you came into court, wouldn't
14 you?

15 A. Yes, sir.

16 Q. Did they suspect anybody else of having stabbed
17 Officer Leeke?

18 A. I have no idea.

19 Q. Were you brought in front of Officer Leeks as he lay
20 there?

21 A. Yes, sir.

22 Q. Did you hear anything he said?

23 A. Yes, sir.

24 Q. What did he say?

25 A. He said that I was not the one, and said the guy had

1 curly hair, as far as I know.

2 Q. Did he say that-- first of all, was Officer Riley
3 there?

4 A. I don't remember who all was there. I remember Mr.
5 Sewer, or something.

6 Q. Officer Sewell was there?

7 A. Yes, Officer Sewell.

8 Q. Did you hear Officer Leeke say that Paul Cox was not
9 the one that stabbed him?

10 A. Yes, sir.

11 MR. RAY: Thank you.

12 REDIRECT EXAMINATION

13 Q. (By Mr. Childs) Did you hear him first say that it
14 was Paul Cox that stabbed him?

15 A. Pardon?

16 Q. Did you hear him at first say that it was Paul Cox?

17 MR. RAY: Your Honor, I'm going to object to the
18 leading question.

19 THE COURT: Don't lead your witness.

20 Q. (Mr. Childs) What did you hear him say first,
21 Officer Peeks?

22 A. When he brung us up in front of the officer, you know,
23 they brung me-- or we was both brought up together, if I can
24 remember this right. They brung me up in front of him and he
25 says "No, it wasn't him, it was the other one."

1 Q. Who was the other one?

2 A. Paul Cox. And then they brung Paul over, and Paul
3 said, "You must be mistaken," or something another, and then
4 he looked and said that the guy had fluffed out hair or
5 something or other like that.

6 Q. Do you remember whether or not Paul Cox has a cap?

7 A. Yes, sir.

8 Q. What kind of cap does he have?

9 A. It's a purple one with a yellow -- either a yellow
10 tiger on the front or a bear, or something. I don't remember
11 exactly.

12 Q. And after you came back to the cell, what did he do, if
13 anything, with his clothes?

14 A. He got rid of the cap.

15 Q. Okay, what about, if anything, with his shirt?

16 A. I don't remember. I think he still had on the same
17 shirt.

18 Q. Do you know what color that was?

19 A. I don't remember what he had on, what he had got
20 dressed in, but when he came back in he, I think, had on a
21 Converse shirt or something, I don't remember exactly for
22 sure.

23 Q. Now, as an inmate at Perry, are y'all instructed about
24 contraband regulations there?

25 A. Yes, sir.

1 Q. Is this a contraband item?

2 A. Yes, sir.

3 Q. And y'all are made aware of that?

4 A. Yes, sir.

5 Q. Is there a booklet they hand out to the inmates about
6 what they can and cannot have?

7 A. Yes, sir.

8 Q. Is that one of the items that you can have?

9 A. It's one that you can't have.

10 MR. CHILDS: Okay. That's all the questions I have.

11 RECROSS EXAMINATION

12 Q. (By Mr. Ray) They brought you up first to the officer
13 that was laying there on the floor?

14 A. Yes, sir.

15 Q. How tall are you?

16 A. Five-nine, five-ten.

17 Q. Do you ever wear a hat?

18 A. Yes, sir.

19 Q. Did you hear the officer say something about the man
20 that stabbed him had a tattoo on his arm?

21 A. No, sir.

22 Q. You didn't hear that?

23 A. I don't recall.

24 MR. RAY: That's all.

25 (The witness was excused.)

1 MR. CHILDS: The State would call Charles Brock.

2 CHARLES BROCK

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 Q. (By Mr. Childs) MR. Brock, where are you employed?

6 A. South Carolina Department of Corrections, Perry
7 Correctional Institution.

8 Q. What's your job there?

9 A. Chief Security Supervisor of Medium Population.

10 Q. What are your duties as far as Chief Security Super-
11 visor?

12 A. I'm in charge of all security officers and security of
13 the institution.

14 Q. Was that your position back on May 10th of this year?

15 A. It was.

16 Q. Would you tell us what, if anything, unusual happened
17 on that day?

18 A. Somewhere around three-fifteen, three-thirty, I
19 received a call from the Institution saying that we had an
20 officer who had been stabbed, and I needed to report to the
21 center.

22 Q. Okay, what time did you report?

23 A. Approximately, quarter to four, it took me about
24 fifteen minutes to get there.

25 Q. What did you do after you reported?

1 A. I went down to the yard area in Medium Population.
2 In between that time, I talked to a few people on my way
3 to the yard. As I came out of the building on to the yard,
4 I could see that EMS had arrived and they were taking Officer
5 Peaks out of the dormitory and were leaving. I then went
6 on into the first building, which is Q-1, and I talked with
7 several officers there, one of them, including Mr. Sewell,
8 who gave me a rundown of, basically, what had happened and
9 what we were looking for.

10 Q. What did you do after that?

11 A. Then, we was in the process of locking down the yard,
12 that is, having all inmates return to their assigned quarters
13 for lockdown. Then, preliminary investigation, just trying to
14 find out who, why, how, things of that nature.

15 Q. What happened later on that evening?

16 A. After we had the yard closed and were determining how
17 we were going to allow the inmates to eat, after we had
18 started that procedure, I came back up to the Administrative
19 Building, and I was back in an office area that I use some-
20 times, not my office proper but an office area that I use.

21 Sometime after that, one of the officers came up and
22 said that an inmate was out there that wanted to talk with me
23 and that he wanted to give me some information about the
24 stabbing.

25 Q. Who was that inmate?

1 A. I came out of that office area and it was Paul Cox.

2 Q. All right, is that him seated over there in the Coca-
3 Cola shirt?

4 A. That is he.

5 Q. All right, what, if anything, did you do with him after
6 that?

7 A. Well, at that point he told me that he had some infor-
8 mation. I took him back to the briefing room, which is in
9 that same building where we brief officers every morning,
10 and Paul said that he knew who had done the stabbing.

11 Q. All right, at that time did you do anything in parti-
12 cular?

13 A. After that, I asked him how did he know, and things of.
14 that nature, and he said, "I know, and I can verify who done
15 it." And then, he said, "I did it." At that point I told
16 him to stop, don't say anything else. At that time, I
17 believe I went and got Mr. Riley, who was not with me
18 already, I think I went and got Mr. Riley and told him to
19 come back to the briefing room with me. While I was out of
20 the office, out of that area, out of the briefing room area,
21 I went and got a Waiver of Rights form.

22 Q. Let me show you what's been marked as State's Exhibit
23 No. 3. Is that the form that you got that day?

24 A. It is.

25 Q. Tell us what you did with this form.

1 A. Okay, when I came back with the form in hand, I
2 explained to Cox what I had to do, and that was to read him
3 his rights. I proceeded to do so and asked him if he under-
4 stood and if everything on that form was clear. And he said
5 he did. Initially, he said I didn't have to do that because
6 he was aware of his right, but I told him that was the
7 procedure we have to do.

8 Q. All right, did he sign it?

9 A. He did.

10 Q. Is that his signature on the bottom?

11 A. Yes.

12 Q. Do you remember what he was wearing at that time?

13 A. I don't think anything out of the ordinary. All
14 inmates at Perry have to wear blue jeans, either State
15 provided blue jeans or blue jeans of their own. I don't
16 remember if he had a particular kind or color shirt on.

17 Q. Do you remember whether these were his jeans or not?

18 A. I would only be able to remember that because of some
19 holes that would be in one of the pockets that he showed me.

20 Q. He showed you some holes in the pocket?

21 A. He did.

22 Q. Okay, would you look in these jeans and see if there
23 are holes in the pockets?

24 (The witness examined the jeans.)

25 A. There are holes in the right side pocket.

1 Q. I notice you went to the right side first, why did you
2 do that?

3 A. No particular reason.

4 Q. Okay. Following that, what, if anything, did he tell
5 you about Officer Peeks?

6 A. Well, at that point he explained to me that he knew who
7 did it, it was he, himself, and that there was no need for
8 any persons that were locked up to be involved in it.

9 Q. Did he tell you why he did it?

10 A. Well, yes, he told me-- I didn't understand it all--
11 he said that he was just tired of people messing with him and
12 putting up with it, and that he stabbed Officer Peeks not
13 because of any particular reason but because he just happened
14 to be there at the time. I believe earlier that day Officer
15 Peeks had had a confrontation or had searched down some other
16 rooms, and he was just "tired of the crap," as he put it and
17 he wasn't taking anything from anybody, the Warden, Deputy
18 Warden, Chief, nobody.

19 Q. Did he tell you anything else aside from that?

20 A. Not that comes to mind right at this moment.

21 Q. Did you threaten him or promise him anything, or coerce
22 him, anything to get him to tell you that?

23 A. No, he came up on his own. I did not solicit in any
24 shape, form or fashion. He came up to my office area and
25 wanted to talk with me.

1 Q. Didn't use rubber hoses?

2 A. No. I didn't use any kind of coercion whatsoever.
3 Of course, I was willing to hear it, but I made him no
4 promise of any kind.

5 Q. And is it your impression that he understood when he
6 waived his rights, that he understood what he was doing?

7 A. I'm sure he did.

8 Q. Was it your impression he just wanted to clear the
9 matter up?

10 A. That was my impression. Of course, that was also what
11 he told me.

12 MR. CHILDS: Please answer any questions Mr. Ray may
13 have.

14 CROSS EXAMINATION

15 Q. (By Mr. Ray) Officer Brock, at the time Paul Cox
16 approached you, there was some inmates in holding cells,
17 weren't there?

18 A. They may have been. I don't know if they were in the
19 holding cell or had already gone up to our lock-up section,
20 but prior to his coming up there had been three or four
21 inmates locked up.

22 Q. Was it Leroy Abernathy, Roger Johnson and Wesley
23 Gerald?

24 A. They were three of the ones, yes.

25 Q. They had been put in holding cells, is that correct?

1 A. I had instructed Mr. Sewell, who was the Supervisor on
2 that particular day, to lock those three people up. Now,
3 whether they had gone up already or not, I'm not really
4 aware, because it was a pretty eventful day not to mention
5 that particular time.

6 Q. They were locked up after Officer Peek was stabbed,
7 is that correct?

8 A. Sometime after that, yes, sir.

9 Q. And they were locked up as a result of the stabbing, is
10 that correct?

11 A. They were locked up because they met the description
12 of who we supposed did the stabbing, and not only that,
13 one of the guys, Leroy Abernathy, happened to be sitting at
14 the table when Officer Peek was stabbed.

15 Q. So, you thought that one of those three people might
16 have done it not only because they were nearby, but because
17 they fit the description?

18 A. I thought they were good suspects.

19 Q. Do you suppose that Mr. Cox might have said what he said
20 in order to get them released?

21 A. I don't suppose that, no.

22 Q. Is that possible?

23 A. Given circumstances, I guess anything could be possible.

24 Q. Now, were you there while Officer Peek was laying on
25 the floor?

1 A. I was not. As I stated, I got there as the EMS was
2 taking him out and putting him in their vehicle and leaving.

3 Q. So, you didn't get to hear him say anything?

4 A. I did not.

5 Q. What description did you have from-- what description
6 did you have for the assailant, did you have the fact that he
7 had a tattoo on his arm?

8 A. I did not. I don't recall hearing anything about a
9 tattoo. I think the information I received from people
10 that were working for me was that a white male, kinda tall,
11 long curly hair.

12 Q. Do you remember telling Paul Cox that you didn't
13 believe that he had done it because his T-shirt didn't meet
14 the description, do you remember that?

15 A. I did not tell him that.

16 Q. You did not tell him that?

17 A. I did not.

18 Q. Did you tell him at any time you didn't believe he had
19 done it?

20 A. Did not.

21 Q. You did not?

22 A. Did not.

23 Q. Did Officer Riley tell him that?

24 A. Yes, Mr. Riley told him that he didn't believe he had
25 did the actual stabbing.

1 Q. And you say that Paul Cox told you that he stabbed
2 Officer Peekes because he just happened to be there, that he
3 could have stabbed anybody?

4 A. Basically, that's what he said.

5 Q. And he didn't have a prearranged plan to go stab
6 Officer Peekes?

7 A. If he had one, he didn't relay that to me.

8 MR. RAY: That's all.

9 MR. CHILDS: That's all I have of this witness, Your
10 Honor.

11 (The witness was excused.)

12 THE COURT: All right, Madam Forelady, Ladies and
13 Gentlemen, County Council need this chamber tonight, so we
14 are going to break early.

15 After you leave here and even when you come back, you
16 are not to discuss this case with anybody, and don't let
17 anybody talk to you about it, I mean, don't talk to any
18 husband, wife, boyfriend, girlfriend, family, neighbors,
19 anybody about this case. Again, as I say, don't let anybody
20 talk to you about this case. If anybody attempts to discuss
21 this case with you, get their name or description and report
22 it to me.

23 You are not to allow yourself to be exposed to anything
24 in the media, if there is anything in the media about this
25 case. That means don't watch anything on television about

1 this case, don't read anything in the newspaper, if there is
2 anything in the newspaper about this case. Don't listen to
3 anything on the radio about this case. If anything were to
4 be in the media, turn it off, don't listen to it, watch it,
5 or read it. Don't let yourselves be exposed to anything in
6 the media about this case.

7 I'll ask that you be back in your jury room tomorrow
8 morning at nine-thirty. When you come back to the court-
9 house, just go straight to your jury room, don't linger out
10 in the halls, and we will try to start promptly at nine-
11 thirty.

12 (The jury retired from the courtroom. The trial
13 proceedings were in recess until the following day.)
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1 TUESDAY, AUGUST 4, 1987 9:30 a.m.

2 MR. RAY: Your Honor, Mr. Cox would like to make a
3 request of the Court.

4 THE COURT: All right, Mr. Cox.

5 THE DEFENDANT: Officer Peeks, I would like the gun
6 removed from his side in my presence. I don't feel safe
7 with the gun on his side.

8 THE COURT: Where is Officer Peeks?

9 MR. CHILDS: He is right here, Your Honor. He's the
10 Police Officer, he has the gun on his belt, it's standard
11 equipment.

12 THE COURT: The request is denied.

13 THE DEFENDANT: Well, I would like to be removed from
14 the courtroom, then, because I feel like my life is in
15 jeopardy sitting here.

16 THE COURT: No, sir.

17 MR. RAY: Your Honor, we had a question this morning
18 about whether or not the underwear was in evidence, and we
19 more or less agreed that they were in evidence. I don't know
20 if they got marked or not.

21 MR. CHILDS: Yeah, they were marked. I was unsure this
22 morning as checking my notes whether or not we put them in
23 evidence. Bob and I got together and said it was no reason
24 to call the witness back, that I had already shown it to the
25 jury and he would stipulate it into evidence at this time.

1 THE COURT: It was admissible and it is admitted.

2 (The Shorts, previously marked
3 State's Ex. No. 5, were received
in evidence.)

4 MR. CHILDS: Thank you, Your Honor.

5 (The jury was brought into the courtroom.)

6 MR. CHILDS: The State would call Officer Peeks to
7 the stand.

8 FLOYD D. PEEKS

9 having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 Q. (By Mr. Childs) Officer Peeks, make sure you speak up
12 for us so the jury can hear you. How old are you?

13 A. I'm twenty-five years old.

14 Q. All right, are you from the Greenville area?

15 A. Yes, I am.

16 Q. Where are you from in Greenville?

17 A. Berea, my parents live in Berea.

18 Q. Is that where you were born?

19 A. Yes.

20 Q. Okay, do you have family in this area?

21 A. Yes, I do.

22 Q. Where are you presently working?

23 A. I'm a Police Officer-Patrolman with the Belton
24 Police Department.

25 Q. How long have you been working for the Belton Police

1 Department?

2 A. I started full time on July 11th.

3 Q. And where were you working before that?

4 A. Perry Correctional Institutional as a Corrections
5 Officer.

6 Q. Okay, how long have you been in law enforcement?

7 A. About five and a half years.

8 Q. Okay, was all that up here in the Greenville area?

9 A. No, sir, part of it was in Savannah, Georgia. I was a
10 police officer there for three years and a half until I move
11 to the Greenville area.

12 Q. When did you move back to the Greenville area?

13 A. Back in '85.

14 Q. Is that when you started working for Perry?

15 A. It was about '86 when I started working for Perry.

16 Q. What kind of duties did you have at Perry, what was
17 your position?

18 A. My position was the custody and security of the inmates
19 and, also, to control any contraband that might come into the
20 institution.

21 Q. Okay, so you're familiar with the contraband policy
22 there?

23 A. Yes, I am.

24 Q. Okay, now, you said you started working for Perry when?

25 A. I started on March 23, 1986.

1 Q. Okay. Where were you assigned back in May of this
2 year, where were you working?

3 A. I was assigned to Q-1 as Wing Officer there.

4 Q. And Q-1, what kind of area is that? I know we've
5 heard a lot of Q's and numbers, where is that located in
6 Perry Correctional Facility?

7 A. Okay, it's a large dormitory within the institution.
8 They have four, they're 1 through 4. They have about a
9 hundred and fifty inmates around that area in one dorm.
10 You have them split up on each side.

11 Q. Okay, back in May of this year, you were working in
12 Q-1?

13 A. Yes, sir, I was the Wing Officer there.

14 Q. Okay, and was Paul Cox an inmate in that area?

15 A. Yes, he was.

16 Q. How many inmates are in Q-1 area?

17 A. I'd say around ninety.

18 Q. Ninety, okay. Let me direct your attention to the
19 spring of this year. Do you remember what cell Paul Cox was
20 in at Perry Correctional?

21 A. Q-1-04, I believe.

22 Q. Would you come down and draw us a schematic of Q-1 and
23 indicate to us the pertinent areas there.

24 (The witness went down to the blackboard, and drew
25 a diagram.)

1 A. (The witness) Right here is the main control, the
2 officers stay in the main control area. These are the wings
3 that are facing the doorway. And you have an upstairs and
4 downstairs. This right here is what they call The Rock,
5 this is where all the inmates have their recreation area,
6 and we are to patrol within that one wing. We had two
7 officers assigned to that side.

8 Q. Now what wing were you in?

9 A. I was in A-side.

10 Q. That's Q-1, over here?

11 A. Right, that's A-side and B-side.

12 Q. That's A-side and B-side of Q-1, okay. Do you
13 remember what officer was here at the main control on
14 May 10th?

15 A. Officer Daniels.

16 Q. Who was on "B" side?

17 A. Officer Long.

18 Q. And you were patrolling over here?

19 A. Yes, sir.

20 Q. Show us where Paul Cox' cell is?

21 A. Okay, Paul Cox' cell-- this would be the wing, it's like
22 an upstairs and they have a wing that you can walk to the
23 bottom. Paul Cox was located just as you go in the door,
24 and go down about the fourth cell on your right.

25 Q. About how many inmates did you deal with every day?

1 A. Around five or six hundred, depending on what job you
2 are assigned to.

3 (The witness returned to the stand.

4 Q. All right, and you said part of your job was contraband,
5 is that right?

6 A. Yes, sir.

7 Q. Previous to May 10th did you have the occasion to
8 search Paul Cox's cell for contraband?

9 A. Yes, I did.

10 Q. Did you find any?

11 A. Yes, sir, I found six gallons of homemade liquor, it's
12 called buck. It was took the previous weekend before I got
13 stabbed.

14 Q. Okay, so you had seen him that day?

15 A. We had had dealings with the other inmate that day.

16 Q. And that was Ralph Gossett?

17 A. Yes, sir.

18 Q. Now, let me direct your attention to May 10th, where
19 were you seated here on the---

20 A. Okay, as you come in the door there is a stairwell
21 that comes-- where you can walk, go to the upstairs.

22 Q. Come down and mark it for us.

23 (The witness went back to the diagram.)

24 A. Okay, as you go through here, there is a doorway and
25 you have a stair, the upstairs is like a wing, and I was

1 located at the stairwell, at the side of the stairwell,
2 sitting at a table.

3 Q. Okay, draw us where you were sitting at the table.

4 A. I was sitting right here at the table against the
5 stairwell, I had my back to it.

6 Q. Your back was to the stairwell, all right.

7 (The witness returned to the stand.)

8 What kind of shifts were you on that day, what time did
9 you come in?

10 A. I came to work at eight to four, I was on the first
11 shift.

12 Q. So, you came in at eight o'clock. About three o'clock
13 were you sitting where you just indicated?

14 A. Yes, sir.

15 Q. What were you doing then?

16 A. At that time I had sent Inmate Cannon up for verbal
17 threats against me.

18 Q. Okay, and what were you doing as a result of that?

19 A. I was writing an incident report on that subject.

20 Q. All right, tell us what happened while you were doing
21 that.

22 A. I was sitting there writing the report, and there was a
23 lot of traffic in and out of the dorm so you really don't pay
24 a lot of attention to how much traffic it is.

25 Q. Was it loud?

1 A. It's pretty loud, a lot of talking and conversing.
2 And I was sitting there doing the report and Inmate
3 Abernathy and Cox were sitting at a table diagonal in front
4 of me.

5 Q. Would you please step down and show us where they were
6 sitting?

7 (The witness went down and marked the diagram.)

8 So, you indicated that Inmate Cox is the one on the
9 right there at the table?

10 A. Yes, sir.

11 (The witness returned to the stand.)

12 MR. RAY: Your Honor, I'm going to object to his
13 leading. If he wants to say write Cox in there or this is
14 Abernathy---

15 THE COURT: Don't lead your witness.

16 MR. CHILDS: Yes, sir.

17 Q. (Mr. Childs) Tell us what happened after that.

18 A. Okay, I was sitting at the table and I was looking
19 around quite a bit, and I happened to still be doing my
20 report, and the dorm sorta got sorta quiet at that time.
21 Well, I kindly looked up and I had seen Cox moving out but,
22 you know, he was coming not directly toward me but moving
23 toward my table. And I kindly stood up and when I stood up
24 Cox grabbed me around the neck, and I turned to the side
25 and he hit me in my right side with that shank.

1 Q. Let me show you what's been marked State's Exhibit
2 No. 1, can you identify this?

3 A. Yes, I can.

4 Q. How can you identify this?

5 A. I seen it, I could see it right here, I raised my arm.
6 It had a white piece of tape, I could see it in my side.

7 Q. Did it have this kind of tape?

8 A. Yes, it did.

9 Q. What is different about this tape in the color?

10 A. It was white, that's what I remember.

11 Q. It's a blue color in there?

12 A. Yes, sir, but it was white at that time.

13 Q. Now, could you show us-- step down please and show us
14 exactly how this happened to you.

15 (The witness went down in front of the jury.)

16 A. Okay, I was sitting in the chair, sitting down and I
17 stood up, and he was in arm's reach. He grabbed me around
18 the neck, he come around, I turned to the side, and he went
19 down like this (illustrating) in my back.

20 Q. Did you get a clear view of his face?

21 A. Yes, I did.

22 (The witness returned to the stand.)

23 Q. (Mr. Childs) Now, the person you have identified as
24 Paul Cox-- Your Honor, I would ask that the defendant please
25 stand up.

1 (The defendant stood up.)

2 Q. Is this the individual you were talking about?

3 A. Yes, he is.

4 THE DEFENDANT: Why do you want to lie, that's all I
5 want to know.

6 THE COURT: Sit back down.

7 THE DEFENDANT: That's all I want to know, why you
8 want to lie on me here today.

9 THE COURT: Go ahead, Mr. Childs.

10 Q. (Mr. Childs) Is he different today than he was then?

11 A. Yes, he had a beard at that time.

12 Q. What kind of clothes was he wearing?

13 A. He had blue jeans on. He had a cap on with an emblem
14 on it, purplish in color.

15 Q. Okay, what color was the emblem?

16 A. It was yellowish.

17 Q. What kind of shirt do you remember he had on?

18 A. He had a blue type shirt like he's got on now, like a
19 T-shirt type, but it was blue in color.

20 Q. Now, after this attack, what happened to you?

21 A. I went to the ground and I seen Inmate Cox walk back
22 toward the back of the rock toward that table.

23 Q. Will you come down please and indicate which way he
24 went.

25 (The witness went back to the diagram.)

1 A. (The witness) Okay, I stood right here and I fell
2 about where this table is. Inmate Cox walked off back toward
3 the back of the wing toward that table where they were first
4 sitting.

5 (The witness returned to the stand.)

6 Q. (Mr. Childs) What happened to you after that?

7 A. At that time Officer Kennebou-- I hollered out a real
8 loud scream and it directed the other officers so they got
9 the yard officer, Kennebou, came in and assisted me and then
10 Officer Inman got there.

11 Q. Okay, and what happened after that?

12 A. At that time I was laying on the floor. They were
13 kinda keeping the shank steady so it would not come out my
14 side. They started getting my clothes off and I laid down on
15 the floor and they started bringing inmates out.

16 Q. How were you feeling at that time, were you conscious?

17 A. I was conscious but it was starting to pain, the pain
18 was starting excruciating.

19 Q. Tell us about bringing the inmates out. Did you know
20 why they were doing that, I mean, you were obviously in a lot
21 of pain?

22 A. Yes, they asked me a description at that time and
23 I gave them a good description of him, and so they started
24 bringing inmates that kinda fit that description to me.

25 Q. Okay. Tell us about that.

1 A. Okay, they brought Inmate Cox out the first time, that
2 was within about, maybe, ten minutes of the stabbing. I
3 identified him then and he had change---

4 Q. They brought him before you at that time?

5 A. Yes, sir.

6 Q. At that time what did you say in regards to him?

7 A. I told them that was him.

8 Q. Was he wearing the same clothes?

9 A. No, sir, he had changed his clothes, just his shirt.

10 Q. Was he wearing the hat you described?

11 A. No, sir. He had a white T-shirt on at that time.

12 Q. All right, and go ahead and tell us what happened after
13 that.

14 A. Okay, after then, they brought several more inmates
15 and I believe they brought Inmate Cox back. That was within
16 about thirty minutes of the stabbing. I started getting
17 groggy and the pain, you know, was really getting to me, and
18 I looked up at him again, kinda-- you know, my vision was
19 kinda blurred because I was in pain.

20 Q. All right, what did you say then?

21 A. I told them no, but, you know, that was within thirty
22 minutes of the stabbing.

23 Q. - Could you recognize him that second time around?

24 A. I had a blurred vision of him but I would know him.

25 Q. What happened after that?

1 A. Okay, at that time the medical people and Chief Riley
2 and Chief Brock had got there and started securing the area.

3 Q. Okay, what happened to you after that?

4 A. After then I was transported to the Greenville Memorial
5 with Officer Long.

6 Q. What happened to you there?

7 A. At that time they took me into the hospital and they
8 advised me that I was going to have to have surgery because
9 they didn't know the kind of damage this shank had done to my
10 back.

11 Q. Okay, and what happened to you after that?

12 A. Okay, at that time, they didn't remove the shank for at
13 least five hours after the stabbing because they were afraid.
14 to move it.

15 Q. Did they operate on you?

16 A. Yes, they did.

17 Q. Where did they operate on you?

18 A. They went in my stomach and moved everything around to
19 see if it had done any damage.

20 Q. And what kind of damage was done, do you know?

21 A. It was twelve inches within my back. He didn't hit the
22 organs. He stopped less than an inch from my spine.

23 Q. You say you've got a scar on your stomach?

24 A. Yes, I do.

25 Q. How long is that?

1 A. It's seventeen inches long, three and a half inches
2 deep.

3 Q. Okay, how about on your back?

4 A. My back is twelve inches inside my back.

5 Q. Do you have any permanent disability because of this?

6 A. Nothing but the holes left in my stomach. I still
7 have quite a bit and I had an eye infection from the stabbing
8 the other day that was caused by the stabbing.

9 Q. And after this stabbing, how long were you out of work?

10 A. I was out of work forty-nine days.

11 Q. How long were you in the hospital?

12 A. Six days at that time.

13 Q. Okay, have you been back since?

14 A. I have went back to the doctor several times to be
15 checked up. They have still not released me yet.

16 Q. And after that, you quit your job at Perry?

17 A. Yes, I did. I became a police officer. I had the
18 chance to come to Belton full time.

19 Q. Okay, now, is there any doubt in your mind that this
20 individual over here is the one that attacked you?

21 A. No, sir, there's no doubt in my mind at all.

22 Q. Okay, and you were familiar with him before hand?

23 A. I didn't know him by name, I knew his face. I hadn't
24 been in that dorm that much, but I did know the faces.

25 Q. And you're absolutely certain this is the fellow that

1 attacked you?

2 A. Yes, I am.

3 Q. Do you recognize these jeans?

4 A. Yes.

5 Q. How do you recognize these jeans?

6 A. He had a pair of blue jeans on when I seen him. It was
7 blue jeans and blue shirt on.

8 Q. The first time?

9 A. Yes, sir.

10 Q. And the second time he had--

11 A. He had a white T-shirt on and just jeans.

12 Q. Okay, can you identify this hat?

13 A. Yes, I can.

14 MR. CHILDS: Would you mark this for identification.

15 (The Cap referred to was marked
16 State's Exhibit No. 6 for
identification.)

17 Q. (Mr. Childs) How are you able to identify this cap?

18 A. I remember the hat being purplish in color and I
19 remember the emblem was like a wolverine, that's what I
20 advised them it looked like to me.

21 Q. How would you identify this hat?

22 A. Because the inmate was wearing it when he stabbed me.

23 Q. Who was wearing it?

24 A. Paul Cox.

25 MR. CHILDS: Your Honor, I move to have this admitted.

1 MR. RAY: Your Honor, I'm going to object to this,
2 unless he can establish the chain of custody.

3 THE COURT: Sustained. Put it up until it is admitted
4 into evidence.

5 THE DEFENDANT: Could I ask where they received the
6 hat from?

7 THE COURT: I sustained your lawyer's objection.

8 THE DEFENDANT: You mean anybody could bring something up
9 off the yard at Perry and just hand it to 'em and say, "Yeah,
10 this belongs to Paul Cox"?

11 THE COURT: Go ahead, Mr. Childs.

12 MR. CHILDS: Yes, Your Honor.

13 Q. (Mr. Childs) Is this the first time today that you've
14 seen him since the attack?

15 A. I seen him in the preliminary hearing at the Judge's
16 office.

17 Q. At that time were you still positive of your identifi-
18 cation?

19 A. Yes, I was.

20 Q. And are you still positive today?

21 A. Yes, positive.

22 MR. CHILDS: Please answer any questions Mr. Ray may
23 have.

24 CROSS EXAMINATION

25 Q. (By Mr. Ray) Officer Peeks, did you attend the

1 preliminary hearing at the Law Enforcement Center?

2 A. Yes, I did.

3 Q. Was I there?

4 A. Yes, sir, you were.

5 Q. Was Mr. Cox there?

6 A. Yes, he was.

7 Q. Do you remember when that preliminary hearing was?

8 A. Sir, I don't remember the date, but I remember
9 attending.

10 Q. Was it-- I don't have the date here in front of me. It
11 was about three or four weeks ago, is that correct?

12 A. Yes, sir, I believe that's correct.

13 Q. You remember giving a statement May 12th at Perry
14 concerning this incident, do you remember doing that?

15 A. Yes, I remember that.

16 Q. And regardless of what that statement says, or what was
17 said at that preliminary hearing, today you are saying that
18 Paul Cox is the one that stabbed you?

19 A. Yes, sir.

20 Q. You're certain of that?

21 A. Yes, sir, I'm certain of it, positive.

22 Q. You didn't state previously that you didn't know who
23 did this?

24 A. I didn't know him by name but I knew him by face.

25 Q. You didn't state that you didn't see the person who

1 did this?

2 A. No, sir, I didn't state that.

3 Q. How many people were in this cell block at the time
4 you got stabbed?

5 A. Sir, I couldn't tell you, there was a number of inmates
6 in there, I really couldn't tell, I couldn't answer that.

7 Q. Was it more than a hundred?

8 A. I really don't know, sir. I'd say probably sixty or
9 seventy. But, see, on a day-to-day basis, they go out in the
10 yard and there's a lot of traffic in and out, so, you know,
11 if it's a hot day they really don't stay in the building that
12 much.

13 Q. How did you prepare for your testimony today?

14 A. How did I prepare?

15 Q. Yes, sir, for your testimony today, how did you prepare
16 for that?

17 A. I just studied about what happened.

18 Q. Who did you study with?

19 A. Myself, I worked last night at the Police Department
20 and I was working Dispatch, and I had a lot of time to think
21 about it.

22 Q. You didn't talk to anybody about what you were gonna
23 say?

24 A. No, sir.

25 Q. Didn't talk to the Solicitor about it?

- 1 A. Didn't have to, I knew what I was gonna say.
- 2 Q. At the time the stabbing took place, when you got
3 stabbed, were you what was called a rookie?
- 4 A. Well, I had just started work there but I wouldn't say
5 I was a rookie.
- 6 Q. Were you on probation?
- 7 A. Yes, sir, at that time.
- 8 Q. You were on probation. Being on probation, did you
9 have certain restrictions on where you were to go within the
10 compound?
- 11 A. No, sir, the only thing you can't do when you are on
12 your probation, you can't use a weapon, and that's on the
13 outside perimeter.
- 14 Q. Did you ever tell anybody that your assailant had a
15 tattoo on his arm?
- 16 A. No, sir, I don't recall any tattoo. I don't recall any
17 tattoo.
- 18 Q. You never told anybody that you seen a tattoo on the
19 assailant's arm?
- 20 A. No, sir, I don't recall---
- 21 Q. You didn't tell Mr. Counts that?
- 22 A. No, sir, I don't recall any tattoo, not at all.
- 23 Q. How many people would you say had access to you at the
24 time you got stabbed.
- 25 A. You mean the inmates?

1 Q. Yes.

2 A. I would say probably, maybe, ninety, you know, the
3 dorm, I mean this happened, you know, the officer is not
4 refrained, he's in the dorm. There's a number of them that
5 could have access.

6 Q. Could you come down a second.

7 A. (The witness went off the stand.)

8 Q. How are you saying the assailant came up to you, did he
9 walk up face-to-face?

10 A. I was sitting at the table, like I pointed out, I was
11 sitting at the table, and inmates move all the time so you
12 really don't pay a lot of attention to, you know, how much
13 movement is going on because you just kindly look around you.

14 Q. All right.

15 A. And he came up. He didn't come directly, he came, you
16 know, like off to the side.

17 Q. Who came?

18 A. Inmate Cox. He moved up and then moved around to my
19 back, just in arms reach distance.

20 Q. Did he go past your body?

21 A. No, he came right near it so he could reach cut.

22 Q. You saw him walk up to you and then reach out right in
23 front of you?

24 A. Yeah, he reached for this right here. As I showed them
25 a while ago, he reached out.

- 1 Q. Have you ever previously stated that somebody came up
2 from behind you and grabbed you from behind?
- 3 A. No, sir, all I remember is he grabbed me and turned me
4 to the side.
- 5 Q. You were face-to-face with him?
- 6 A. He was on my side, more on my side, right side.
- 7 Q. Had he walked past your shoulder?
- 8 A. Probably even with it 'cause I'm a short guy and you
9 really don't have to go too much to pass me.
- 10 Q. And you're no longer working at Perry?
- 11 A. No, sir, I'm a police officer.
- 12 Q. Is the reason you're not working down there any more
13 because of this?
- 14 A. That and the salary. (The witness returned to the stand.)
- 15 Q. Who all got locked up right after you got stabbed?
- 16 A. Sir, there was a lot of inmates getting locked up. At
17 that time I was on the ground and I couldn't recall how
18 many got locked up. There was a number of them but I was on
19 the ground and I was getting medical attention, so I really
20 can't tell you the exact number.
- 21 Q. Was it about three of them, Abernathy and Johnson--
- 22 A. They was locking down the whole dorm, the whole dorm
23 was getting locked down.
- 24 Q. But the ones they thought had done it, after they came
25 to you and talked to you, they locked---

1 A. Sir, I don't remember what they did because I was under
2 medical attention, I really don't remember what they did
3 after Officer Riley got there.

4 Q. And if somebody else testified that you said that Paul
5 Cox was not the assailant, would they be lying?

6 A. I would say at that time if I gave them a description,
7 you know, the first time that I seen Paul Cox I identified
8 him. The second time they brought him around, like I say, he
9 had changed into a T-shirt, and I was feeling groggy, so that
10 would be the only way 'cause I can identify him. In my
11 statement it clearly states what he looked like and what he
12 had on.

13 Q. And that's that he had curly hair?

14 A. Yes, sir, and he had a beard and a moustache.

15 Q. Had a beard?

16 A. Yes, sir, it's in my statement, if you'll look at it.

17 Q. I am. What kind of beard?

18 A. I'd say just not a full beard but just, you know, it
19 was-- I don't see anybody with a beard to-- it was pretty
20 full, you know, it wasn't a light beard.

21 Q. Well, if somebody said that the last thing you said was
22 "That's not him," would they be lying or not?

23 A. At that time, sir, I was under medical attention. The
24 first time I seen him I would say I knew who he was. On the
25 second time they brought him around, I would say, no, they

1 wouldn't be lying, they would just have a misstatement of
2 fact.

3 Q. How long after you got stabbed were you under medical
4 attention?

5 A. For about forty-five minutes.

6 Q. And how long after you got stabbed was it until you got
7 under medical attention?

8 A. Could you repeat the question?

9 Q. You were under medical attention for forty-five
10 minutes. How long was it until you got under medical
11 attention?

12 A. About fifteen to twenty minutes before the Nurse and
13 stuff got there. The officers were already there, but--

14 Q. So, would it be fair to say that the entire time you
15 were laying there with this thing sticking in your side,
16 you were in pretty bad shape?

17 A. I was in pain, it was excruciating pain, there's no
18 doubt about it.

19 Q. I imagine it was. How many times did Mr. Cox-- was
20 he brought before you while you were laying there?

21 A. Twice I believe, sir.

22 Q. You're sure it was two times, it wasn't just one time?

23 A. No, sir, I believe it was twice.

24 Q. And what was the time period between the first time and
25 the second time?

1 A. The first time was within the fifteen minutes. The
2 second time, I would say, probably another fifteen minutes,
3 it was like, you know, fifteen minute periods.

4 Q. You couldn't be mistaken about that?

5 A. No, sir, that's what I recollect. Like I say, at the
6 time I was under medical attention, so I couldn't really tell
7 you the time, you know, I can only speculate. I tell you
8 what I know.

9 Q. If you are mistaken about that, could you be mistaken
10 about other things?

11 A. No, sir, no, sir, there's no mistake about who did it.

12 Q. But, I mean, how many times was Mr. Cox brought before
13 you?

14 A. Twice is all I can remember.

15 Q. Well, I mean, you're sure it was twice?

16 A. Yes, sir, that's all I can remember. I remember what
17 he had on the first time and the second time.

18 Q. Did you know an inmate by the name of Gossett?

19 A. Yes, sir, I had dealings with him. I had took some
20 buck out of the room, homemade liquor. That's the only way I
21 knew him.

22 Q. Did you see him that day?

23 A. That day? No, sir, I don't recall seeing him.

24 Q. Was he brought before you?

25 A. Sir, I don't remember him.

1 Q. If somebody else had testified that Mr. Cox was only
2 brought before you one time, would they be lying?

3 A. Sir, I remember the times that he was brought before
4 me. I don't know what some one else would say, but this is
5 what I would say.

6 Q. And you don't remember Mr. Gossett?

7 A. Sir, like I say, what I remember is what I stated to
8 you, that's what I remember. I recall it to the best of my
9 knowledge.

10 Q. Who was with Mr. Cox when he was brought before you
11 the first time?

12 A. There was two inmates with Paul Cox.

13 Q. Anybody else there?

14 A. I don't recall. I just recall Cox because I had him
15 fresh on my mind.

16 Q. You don't recall anybody else being there. What about
17 some of the officers?

18 A. I recall Officer Inman being there and Officer
19 Kennebou.

20 Q. Officer who?

21 A. Kennebou, he was an officer.

22 Q. Are you sure he was there?

23 A. Yes, sir, he was there.

24 Q. Do you remember anybody else that was there?

25 A. The Chief, Chief Brock was there, Chief Riley.

1 Q. Was DeOley there?

2 A. Yes, sir, he was, he was the Shift Supervisor.

3 Q. Was Sewell there?

4 A. Sewell was there, yes, sir.

5 Q. After Mr. Cox was brought before you, was he locked up?

6 A. Sir, I don't know. They brought him around. I really
7 couldn't answer that. You'd have to check with one of the
8 supervisors.

9 Q. If somebody else had testified he wasn't locked up,
10 would that lead you to believe that---

11 MR. CHILDS: I object, Your Honor, he testified he
12 doesn't know whether he was locked up or not.

13 THE COURT: He can't speculate.

14 MR. RAY: That's all, Your Honor.

15 THE COURT: Solicitor, anything further?

16 MR. CHILDS: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 Q. (By Mr. Childs) There was a question about probation.
19 What is probation in regards to a new employee?

20 A. A probation period is a period that they check the
21 officer to make sure he's up to standards. They have a
22 certified officer working with him at the time to make sure
23 that procedures are followed.

24 Q. Is that required of all the--

25 A. Yes, sir, it's standard procedure.

1 Q. Nothing unusual about that?

2 A. No, sir.

3 Q. There was mention made of other statements. Have you
4 ever given a different version of this?

5 A. No, sir. The only statement I gave was to Mr. Counts.

6 Q. Okay, is that what you've told the jury here today, the
7 very same thing?

8 A. Yes, it is.

9 Q. And in fact, is that what happened to you?

10 A. Yes, it is.

11 MR. CHILDS: That's all the questions I would have of
12 this witness.

13 (The witness was excused.)

14 MR. CHILDS: That would be the State's case, Your
15 Honor.

16 THE COURT: Madam Forelady, Ladies and Gentlemen,
17 we'll take a break now. I'm going to let you go back to your
18 jury room but do not begin discussing the case. We'll send
19 for you shortly.

20 (The jury retired from the courtroom.)

21 MR. RAY: Your Honor, I would ask for a directed
22 verdict of Not Guilty at this time. I don't think the
23 evidence is sufficient to sustain a verdict.

24 THE COURT: The motion is denied.

25 Would there be any evidence on behalf of the defense?

1 MR. RAY: Yes, sir.

2 Could we have just a minute?

3 THE COURT: Yes, sir.

4 (A short recess was taken.)

5 THE COURT: Mr. Ray, has the defendant made a decision
6 about whether or not he wishes to testify?

7 MR. RAY: Your Honor, Mr. Cox tells me he does not
8 wish to testify.

9 THE COURT: All right, Mr. Cox, you understand you may
10 testify or not testify, that's your Constitutional right to
11 make that decision either way, do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You know, you can talk to your lawyer
14 about it but the person who ultimately has to make the
15 decision is you yourself. Should you choose not to testify,
16 I would tell the jury that they could not hold your failure
17 to testify against you in any way. They could not discuss it
18 in their jury deliberations. It could not be a factor in any
19 way in their decision, the fact that you did not testify.

20 Now, you've discussed with your attorney whether or not
21 you wish to testify?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay, have you made a decision whether or
24 not you wish to testify?

25 THE DEFENDANT: I refuse to take the stand.

1 THE COURT: Okay, I understand.

2 Are you ready to proceed, Mr. Ray?

3 MR. RAY: Yes, sir.

4 THE COURT: Mr. Childs, are you ready?

5 MR. CHILDS: Yes, sir.

6 THE COURT: All right, bring the jury.

7 (The jury was brought into the courtroom.)

8 MR. RAY: Your Honor, at this time the defense would
9 call Ralph Gossett back to the stand.

10 MR. CHILDS: Your Honor, it is my understanding he is
11 calling him as his witness.

12 THE COURT: That happens when he calls his name.

13 RALPH GOSSETT

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 Q. (By Mr. Ray) Mr. Gossett, I believe you testified
17 yesterday, is that correct?

18 A. Yes, sir.

19 Q. Now, do you remember after the officer-- do you
20 remember the officer's name?

21 A. Peek's.

22 Q. Peek's, after he got stabbed, were you brought out of
23 the cell?

24 A. In front of him, yes, sir.

25 Q. Was anybody with you when you were brought out?

- 1 A. My roommate, Paul Cox.
- 2 Q. Paul Cox was brought out?
- 3 A. Yes, sir.
- 4 Q. How many times were you brought
- 5 A. Once, as far as I can remember.
- 6 Q. How many times was Mr. Cox brought out?
- 7 A. Once, as far as I remember.
- 8 Q. And the reason-- what was the reason for being brought
- 9 out?
- 10 A. To be identified, I guess.
- 11 Q. Could the officer identify anybody?
- 12 A. They brung me out first and he said not me, the cther
- 13 one, and they brung Paul up and he said no.
- 14 Q. Said it wasn't Paul?
- 15 A. Yes, sir.
- 16 Q. You're sure you're right about that?
- 17 A. As far as I can remember.
- 18 Q. Now, do you ever remember writing a note to your room-
- 19 mate subsequent to the stabbing?
- 20 A. Subsequent-- what do you mean?
- 21 Q. After all this took place, do you remember writing a
- 22 note to Mr. Cox?
- 23 A. When I was up on the hill, he had passed notes to me
- 24 and I passed notes back.
- 25 Q. You did write him a note?

1 A. Yes, sir.

2 Q. I'm going to show you this piece of paper and see if
3 you can identify it?

4 A. Yes, sir.

5 Q. Did you write that?

6 A. Yes, sir.

7 MR. RAY: Your Honor, I offer this as Defendant's
8 Exhibit 1.

9 MR. CHILDS: No objection, Your Honor.

10 (The Note referred to was
11 marked Defendants' Ex. No. 1
and received in evidence.)

12 Q. (Mr. Ray) Could you read that note to the jury, but
13 before you do, could you tell us about when it was written?

14 A. It was up on the hill, they had locked me up on the
15 hill.

16 Q. And that was after the stabbing?

17 A. Yes, sir.

18 Q. Okay, could you read that note to the jury.

19 A. "Paul, I could care less how long they keep me up here.
20 I ain't telling them shit because I don't know anything.
21 Hell, it was because of that cop and his yelling that woke me
22 up. I told Counts that I didn't know anything. Paul, the
23 guard says that you didn't do it. Hell, I was standing there
24 when he said it. Don't worry, I'm not going to say anything,
25 okay. I'll write you more later. Take care. Ralph."

1 Q. This was within days of the time Officer Peaks got
2 stabbed?

3 A. Hours. No, it wasn't hours, I think I was still out on
4 the yard about a couple of weeks or so after it happened.

5 Q. And it says in there, "Paul, the guard said that you
6 didn't do it"?

7 A. Yes, sir.

8 MR. RAY: That's all.

9 CROSS EXAMINATION

10 Q. (By Mr. Childs) Now, that's not the truth, now, is
11 it, Mr. Gossett, what this says wasn't the truth, was it?

12 A. No, sir.

13 Q. The truth is you gave a statement to Joe Counts
14 following the incident, didn't you?

15 A. Yes, sir, right at that same day that it happened.

16 Q. Matter of fact, isn't this the statement you gave Joe
17 Counts after the incident?

18 A. Yes, sir.

19 MR. CHILDS: Mark this.

20 (The Statement referred to was
21 marked State's Ex. No. 7 for
identification.)

22 MR. RAY: Your Honor, I've got a motion to make
23 outside the presence of the jury.

24 THE COURT: Step up here.

25 (Colloquy was had at the bench.)

1 MR. RAY: I would object to the admissibility of the
2 statement.

3 THE COURT: Sustained.

4 Q. (By Mr. Childs) Did you tell Joe Counts what you told
5 the jury here yesterday?

6 A. Yes, sir.

7 Q. Isn't that the truth of this matter?

8 A. Yes, sir.

9 Q. I show you what's been marked State's Exhibit No. 6.
10 Can you identify this?

11 A. Yes, sir.

12 MR. RAY: I object to that, it's not in evidence. And
13 it's been ruled on.

14 THE COURT: The admissibility was denied at an
15 earlier point in the trial. That doesn't prohibit it from
16 being offered at a later point. Overruled.

17 Q. (By Mr. Childs) Can you identify this?

18 A. Yes, sir.

19 Q. What is this?

20 A. That's the cap that Paul-- that's Paul Cox's cap.

21 Q. You're certain about that?

22 A. Yes, sir.

23 Q. How do you remember this cap?

24 A. Paul wore it all the time.

25 Q. All right, was he wearing it on May 10th?

1 A. Far as I can remember.

2 MR. CHILDS: Your Honor, I'd move to introduce this into
3 evidence.

4 MR. RAY: Your Honor, I'm going to object.

5 THE COURT: On what grounds?

6 MR. RAY: I just don't think that this is-- if it's
7 being offerred for the purpose of establishing it's the
8 defendant's hat, and there has to be more than one hat with
9 Woodruff High on it in that institution down there. And I do
10 not think-- there's no name in here, or anything, I do not
11 think it has been shown this is the defendant's hat. He
12 might have had a similar hat but I do not think that a proper
13 foundation has been laid.

14 THE COURT: Overruled. Submit it in evidence.

15 (The Cap, previously marked
16 State's Ex. No. 6 for ident.
was received in evidence.)

17 Q. (By Mr. Childs) Isn't it true that that day, on May
18 10th, that Paul Cox told you that he had stabbed Officer
19 Peeks?

20 A. Yes, sir.

21 Q. And isn't that the truth of this whole matter?

22 A. Yes, sir.

23 Q. Isn't this (indicating Ex. 1) what he stabbed him with?

24 A. Yes, sir.

25 Q. Isn't this his?

1 A. Yes, sir.

2 MR. CHILDS: No further questions.

3 THE COURT: Anything further, Mr. Ray?

4 REDIRECT EXAMINATION

5 Q. (By Mr. Ray) Mr. Gossett, I believe yesterday you
6 testified you didn't know, I believe you called him, Officer
7 Leekes yesterday?

8 A. Yes, sir.

9 Q. Isn't it true--

10 MR. CHILDS: Objection, Your Honor, this is his
11 witness.

12 Q. (Mr. Ray) Had you ever seen Officer Peeks before
13 May 10th?

14 A. I'd seen him a couple of times around on the yard.

15 Q. Did he ever bust you for jack the day before?

16 A. No, sir, not that I remember. It was a black officer
17 and a white officer. The white officer, I think he had
18 blondish hair, sandy brown. He was a tall officer.

19 Q. You wouldn't come into court and lie, would you?

20 A. No, sir.

21 Q. But you did write this letter to Paul, didn't you?

22 A. Yes, sir. There was a reason for that. And I had seen
23 Mr. Counts, Mr. Counts come up to me. I also told Mr. Counts
24 that I had been receiving letters from him and that I had
25 been writing him back to keep problems from being up there.

1 And he said that was good.

2 Q. You wouldn't frame him, would you?

3 A. No, sir.

4 MR. RAY: That's all.

5 (The witness was excused.)

6 MR. RAY: The defense rests.

7 THE COURT: Would the defense require the State to
8 open? Are you ready to proceed?

9 MR. RAY: We're ready to proceed.

10 THE COURT: Madam Forelady, Ladies and Gentlemen, that
11 completes the testimony and evidence in the case. What
12 remains is for the attorneys to have an opportunity to
13 make a closing statement to you and then I'll tell you what
14 the law is as it pertains to this particular case, and then
15 you will go out and decide your verdict.

16 At this time we will have closing statements by the
17 attorneys. Mr. Ray.

18 (Closing argument was made by Mr. Ray.)

19 CLOSING ARGUMENT SOL. CHILDS

20 MR. CHILDS: May it please the Court, Ladies and
21 Gentlemen of the jury, I want to thank you. I paid close
22 attention to you throughout this trial, that's my job, but I
23 noticed that each and every one of you has paid tremendous
24 attention during the trial. I know some of the witnesses
25 were a bit repetitious but you listened to each and every

1 one of them with tremendous interest and I really want to
2 thank you for that. That's your job, you listen to the
3 evidence, you weigh the evidence in your own mind and you pay
4 close attention and you've got all the evidence there with
5 you to take back to the jury room.

6 Now, having said that, I think the first thing you've
7 got to consider in this case, according to what Mr. Ray is
8 telling you, in order to believe the defendant is not guilty,
9 you've got to believe that Officer Peaks is lying to you,
10 that he's a liar. That's really just coming to the straight
11 facts of it. You have to say that he got up there and just
12 lied to you, said it was Paul Cox.

13 Now, why would he do that? Why would a police officer
14 do it? Why would an officer risk their career to do that?
15 Why? Because it's not so. The truth of the matter is that
16 Paul Cox stabbed Floyd Peaks in the side. He got up there
17 and told you what happened.

18 Now, one of the things to consider is corroboration.
19 People have different versions and different perceptions of
20 facts. I could take all of you to a movie and show you the
21 same movie, and you'd come back and tell me different things
22 that happened in it. That's human, and that will happen on
23 any case. People will be telling you the truth and have a
24 different perception of it. And I think that's what Mr. Ray
25 is trying to tell you that people are lying because they have

1 a different perception of events. But people's testimony
2 have been corroborated throughout this trial and that's what
3 shows you who is telling the truth, is corroboration.

4 You've heard nothing to controvert the fact that these
5 are Paul Cox's pants. Matter of fact, his roommate says,
6 you know, "There's a paint stain on the pants, that's how I
7 remember them, I'm his roommate, he wears them all the time."

8 These are the shorts that Officer Millwood said belong
9 to Paul Cox. Now, this corroborates the case. And Mr. Ray
10 makes a lot of point about maybe this shank won't slide
11 through this hole. Well, it's not supposed to. This is
12 like a holster for a deadly weapon. It's not supposed to
13 slide through, it's supposed to hold it right there in the
14 pocket so you can get it. That's what this is all about, and
15 I submit to you you can slide the shank into them and it will
16 hold it quite securely. I'm pretty sure y'all won't be
17 holding these as freely as I am, but I've got to show you.
18 This corroborates the testimony of everybody you've heard.
19 The testimony of the guards, the testimony of his roommate,
20 the testimony of everybody. This physical evidence here
21 corroborates it. It's like a holster, he's carrying that
22 weapon around with him, looking for a guard, he says.

23 And this, I submit to you, is the real clincher
24 because his roommate said this is Paul Cox's. I almost
25 forgot about this. Remember Officer Peaks testified that

1 his assailant had this hat on. Whose hat is it? It's
2 Paul Cox's hat.

3 Now on the day prior to this attack, Ralph Gossett
4 testified that Paul Cox said he was gonna get a guard. And
5 you heard the other testimony, he was fed up with the system,
6 he was just fed up, he was gonna get somebody.

7 He had the means to do it. He had this shank under-
8 neath his TV, he had this tape wrapped around it, nice little
9 handle. If you look closely at this shank, I believe you
10 can see a piece of tape that might be underneath the
11 exhibit label. You can also see pretty much a line right
12 here. I don't know what that's from, but the witnesses
13 indicated that's how deep it went into Officer Peeks.

14 He had that shank, he was out to get Officer Peeks.
15 He was a new guy, he was enforcing the rules. You heard
16 Officer Peeks testify that a couple of weeks earlier he had
17 taken some homemade liquor out of their cell, and that was
18 enough to tick Paul Cox off. He was carrying that shank
19 around in his pants for two days, I believe he told one of
20 the guards later. It's uncontroverted that he was carrying
21 it around in these pants, and there's the holster for it,
22 and in the shorts. He was out gunning for Officer Peeks.

23 Now, the State is not required to prove to you a motive
24 in any case but I think you can pick up on a motive in this
25 case. He doesn't have to have one, but I think you can see

1 that he was just fed up with it and he was out to get a guard,
2 and Officer Peek happened to be there.

3 Men like Floyd Peek, James Sewell, Robin Inman, Andrew
4 Riley, Charles Brock, they stand between us and inmates.
5 They risk their lives daily to protect us from inmates. And
6 Officer Peek almost paid the ultimate price, almost paid the
7 ultimate price. Who knows what would have happened if they
8 had pulled this shank out right there on the scene. You
9 heard the nurse say he would have bled to death. And this
10 shank here is evidence of Paul Cox's intent to kill Floyd
11 Peek. This shows it to you, a deadly weapon. Not only a
12 weapon but contraband, as you heard testified to by the
13 officers.

14 I don't think, you know, the contraband is not the
15 major issue, but, certainly, if you let prisoners carry
16 these things around, some one is going to get stabbed. And
17 clearly, Paul Cox's pants are designed to carry around
18 contraband. He carried this in them, but the contraband
19 issue really goes along with the assault with intent to kill,
20 here we have the shank, and we have the guard.

21 Floyd Peek's reward for protecting you was a seventeen
22 inch scar on his stomach, a three and a half inch hole in the
23 upper part of his stomach, an inch and a half inch scar in
24 the back, and a twelve inch deep hole in his back.

25 This whole case shows the arrogance and ruthlessness

1 cf Paul Cox. You heard the officers testify that another
2 guard brought him up-- brought Paul Cox up to him and said
3 he had something to say. They read him his rights. He knew
4 his rights, "I just want to tell you that I did it." Two
5 guards testified to that, "He just came up and said to me,
6 'I did it, I stabbed him, what of it?'" Well, for a couple
7 more inches, it would have been in his spine.

8 James Sewell was our first witness and he testified
9 the officer was down, he came, and he noticed one point
10 about it, he saw Inmate Cox walk by and he was the only one
11 that didn't look to see what was going on. He was the only
12 one that didn't look to see what was going on. And I think the
13 officer said, I think he said, because he knew, probably knew
14 what was going on. I think you can use your common sense in
15 regard to that. Common sense will tell you he knew what
16 had happened, he had done it, that's why he wasn't interested,
17 that's why he walked by.

18 Peeks told him that he went directly to Cox's cell, you
19 know. Cox stabbed him and went back toward his cell.
20 That's what Peeks told him, wearing a cap, curly hair. Now,
21 remember that, that's what Sewell said, he described this hat
22 as Peeks described to him, if you recall that, too. "This is
23 that hat he was wearing." Curly hair and moustache, same
24 description of Cox.

25 And Robert Inman testified he got the same description

1 from him, from Officer Peek, lying there writhing in pain,
2 trying to tell them, "Hey, this is the guy that did it.
3 He went that way to Cox's cell, he had curly hair and
4 moustache," gave a description of Paul Cox is what he did.

5 Andrew Riley testified himself, and Andrew Riley is
6 really the one that shows the ruthlessness of this because
7 Riley was involved in helping Peek. And later on, he was
8 there in his office when another guard brought Cox up to his
9 office. Cox said, "Don't worry about my rights, I know what
10 they are. Listen to this, I did it."

11 Now, there was a lot of mention about people being
12 locked up and locked up his friends, or whatever. I don't
13 know. I will submit to you that they don't people in lockup
14 when they've got the actual person that did it. I mean,
15 certainly, the reason you've got people in lock-up is they
16 are suspects, but when some one confesses to it, you no
17 longer have suspects, so you, naturally, release those.

18 Maybe, who knows, Cox had a motive in coming up and
19 confessing. I submit to you there's no reason he would lie
20 about that. There is no reason he would lie about stabbing
21 Officer Peek. He was telling the truth at that time. He
22 told the truth to the guards, said, "I did it." Who knows
23 his motive? Maybe he wanted his innocent friends released.
24 That's fine. It doesn't matter. I submit to you that he
25 had to be telling the truth at that time. There's no way in

1 the world that man will come up and lie about that, and
2 not holding the pocket out and say, "Look, here's the hole,
3 here's the holes I carried that shank in my pocket."

4 And Officer Millwood testified he took the pants off
5 of Cox, took the shorts off of Cox.

6 Nurse Tipton testified as to really the seriousness of
7 this thing that Officer Peaks could have died. It was really
8 an attempted murder situation, and that's what assault with
9 intent to kill is. The judge will instruct you on that.
10 She also testified he was getting shocky. Now, I submit to
11 you that his perceptions were just as good today as they were
12 then but you can understand why he might be confused about
13 one or two times, one or fifty times. There's one thing,
14 that you're not gonna forget and all of you can use your
15 common knowledge and common sense about it, you're not gonna
16 forget who stabbed you in the back or in the side. You're
17 not going to forget that man. You're just not going to
18 forget, you'll be clear about it. You might not be clear
19 about everything that happened around you. For instance,
20 y'all might not remember exactly what you had for breakfast
21 yesterday morning, okay, but you remembered you had to come
22 up here and be on jury duty. He clearly remembers who
23 stabbed him. There's no doubt about it.

24 There's no reasonable doubt in this case, there's no
25 doubt whatsoever. There's nothing that you've heard to tell

1 you different the fact that Paul Cox assaulted this guard
2 with the intent to kill him with this tool, this item, this
3 deadly weapon that's contraband in the prison. He's done
4 nothing to contradict that. And there's no reason why
5 Officer Peeks would lie to you. He's not even working for
6 the Department of Corrections, but he's sure about it because
7 that's what happened to him.

8 And I'll tell you something that really impressed me
9 that Ralph Gossett came up here and testified, probably the
10 only honorable thing he's ever done in his life. He got up
11 here and testified as to the matter. That man's going back
12 to McCormick, and I think you can use your common sense
13 about what he's facing there. People that rat on other
14 people don't have an easy time in the Department of Corrections.
15 He's probably gonna get punished for testifying up here.
16 Certainly, he's not gonna get rewarded, not by me, not by
17 anybody in the Department of Corrections. We wanted to hear
18 the truth of the matter, and he testified truthfully. I
19 think you could see his demeanor on the stand. Paul Cox told
20 him the day before, "I'm gonna stab a guard, give me my
21 shank, it's underneath the TV." After it happened, he went
22 back to the cell and said, "I just stabbed an officer."

23 You think a man, sitting in the hole up there on the
24 hill, though, is gonna write his roommate and say, "I'm
25 gonna testify against you. While I'm here at Perry,

1 let me let you know that I'm gonna testify against you so you
2 can get to me." I'd send that letter if I was Ralph Gossett.
3 I certainly wouldn't want that fellow thinking I was gonna
4 testify against him after knowing what he already knows.
5 Use your common sense.

6 Officer Brock testified that Cox was brought up and he
7 confessed, told him what happened.

8 And then Officer Peeks testified, the last witness, and
9 I think you paid close attention to him. He showed us where
10 the Rock was and all these Q-1's and Q-2's that we were
11 representing. Sitting right there he saw Cox and
12 Abernathy. He saw Cox get up, saw Cox walk toward him. Saw
13 Cox walk right by him and saw Cox stab him, saw Cox go back
14 to his cell. Saw Cox get brought back out to the identify
15 him. He said, "That's him." Had seen him before and that
16 establishes his credibility. If you've seen somebody
17 before, you can identify him easier. He saw him at the
18 preliminary hearing and was still sure that was him. And
19 today, "That's him."

20 There's been a lot of smoke screens, or innuendoes
21 about a tattoo. The evidence doesn't come from Mr. Ray, it
22 comes from the stand. Did you ever hear anybody says that
23 Mr. Peeks ever said anything about a tattoo? Smoke screen,
24 trying to bring it off. The inmates that were locked up,
25 that's a smoke screen. What you are concerned about is

1 whether or not Paul Cox stabbed this guard with the intent to
2 kill him. And what did he have to accomplish it? I think he
3 had this hat that Officer Peaks identified, the shorts, the
4 pants, the shank itself, all the witnesses, clearly show that
5 Paul Cox stabbed the guard beyond a reasonable doubt. I
6 would say beyond any doubt, but people can have doubts about
7 strange things. I can doubt the sun will come up in the
8 morning, but that wouldn't be a reasonable doubt and that's
9 what Mr. Ray is trying to convince you of. The sun's not
10 gonna come up in the morning. But your common sense tells
11 you and everything in your life tells you that the sun is
12 gonna come up in the morning, so that's not a reasonable
13 doubt. You've got to have a doubt that you can attach a
14 reason to, and I would submit to you there is none. I would
15 submit to you that it is your duty to find him guilty of
16 Assault with Intent to Kill and Possessing Contraband.

17 Before I finish I want to thank you, please listen very
18 closely to the Judge's charge because he gives you the law.
19 You take it as he gives it and not the way you think it
20 should be, and take that evidence back in the jury room with
21 you, look at it, look at this holster, and look at the hat,
22 and look at this Waiver of Rights. You know, there's no
23 doubt he gave this statement, there's his signature on the
24 waiver. And you heard nothing to contradict that. Take that
25 back with you, Ladies and Gentlemen.

1 Thank you once again for your very close attention,
2 and please listen to the Judge.

3 CHARGE OF THE COURT

4 THE COURT: All right, Madam Forelady, Ladies and
5 Gentlemen, that completes the arguments of counsel. It now
6 becomes my responsibility to charge you on the law and
7 instruct you as to the law of South Carolina as it pertains
8 to this particular case.

9 By these indictments, the State of South Carolina
10 charges the defendant, Paul Leslie Cox, with Assault and
11 Battery with Intent to Kill and with Possession of Contra-
12 band within a prison. These indictments that I have and
13 which you will have to take back in your jury room with you,
14 are not evidence, they are not to be considered by you or
15 taken by you as evidence. They are merely the vehicles by
16 which these cases come into court for consideration by you
17 the jury and they will be the means by which you report your
18 verdict back to the Court.

19 Now, to these indictments the defendant has pled Not
20 Guilty, and that plea casts the burden upon the State of
21 South Carolina to prove the defendant guilty. A person
22 charged with committing a criminal offense in South Carolina
23 is never required to prove themselves innocent, so I will
24 tell you Madam Forelady, and Ladies and Gentlemen, that it is
25 a cardinal and important rule of the law of evidence that a

1 defendant in a criminal trial, no matter what the enormity of
2 the charges against him may be, will always be presumed to be
3 innocent of the crimes for which he is indicted unless and
4 until his guilt has been proven by evidence satisfying you of
5 that guilt beyond a reasonable doubt.

6 The presumption of innocence does not cease when you go
7 back into your jury room but it accompanies the defendant
8 throughout the trial from the time of his appearance at
9 trial, throughout the trial, unless and until you have
10 reached a verdict of guilt based upon evidence satisfying you
11 of that guilty beyond a reasonable doubt.

12 Our Supreme Court has said the presumption of innocence
13 is like a robe of righteousness placed about the shoulders
14 of the defendant and it remains with him and assigns him to
15 that class, the innocent, until that presumptive robe of
16 righteousness has been stripped from his person by evidence
17 satisfying you of his guilt beyond a reasonable doubt.

18 So, then, Ladies and Gentlemen, this is no mere legal
19 theory, and this is no mere legal phrase, but I say to you
20 that it is a substantial right which every one is entitled to,
21 that is, the presumption of innocence until and unless you
22 are satisfied from the evidence of his guilt beyond a
23 reasonable doubt.

24 Now, as I have stated, the burden of proof is upon the
25 State of South Carolina, represented by the Solicitor's

1 Office, to prove the guilt of the defendant beyond a reason-
2 able doubt. And it is required that each and every element
3 of an offense charged be proved beyond a reasonable doubt.

4 The defendant is entitled to any reasonable doubt. If
5 you have a reasonable doubt as to the guilt of the defendant,
6 then he is entitled to that doubt and would be entitled to an
7 acquittal.

8 Now, when I use the term reasonable doubt, I do not
9 mean by that some whimsical or imaginary doubt, but it is a
10 sound and sensible doubt, a doubt for which you can give a
11 reason. It is a doubt that leaves the mind of a fair and
12 impartial juror in a wavering or unsettled condition after he
13 or she has fairly considered all of the testimony and
14 evidence in the case.

15 As jurors in a case, you have certain functions and
16 responsibilities to perform that are entirely separate and
17 distinct from any one else's. You are what we call the
18 judges of the facts. You are the sole judge of the facts.
19 As a matter of fact, I am prohibited by the Constitution of
20 our State from charging you on the facts of the case or
21 discussing with you the facts of the case. And, again, it is
22 because it is your responsibility and yours alone to pass
23 upon all of the issues of fact that have been presented in
24 this case.

25 In that connection, I would tell you that if, during

1 the course of the trial, or if during my charge, you get some
2 feeling or impression that I have a personal feeling about
3 the facts in the case, I would specifically instruct you to
4 disregard that feeling or impression because it would not be
5 true.

6 Now, it is also your duty and your duty alone to weigh
7 the testimony and evidence in the case and to pass upon the
8 credibility or the believability of the witnesses. In this
9 connection, you have the right to believe all that a witness
10 tells you, or you may disbelieve all that a witness tells you.
11 You may believe a part of what a witness tells you and
12 disbelieve a part. You may believe the several against the
13 one, or you may believe one witness against several. You may
14 take into consideration any bias or prejudice, or interest
15 that you feel a witness may have in a case. I say these
16 things to you merely to emphasize that the weight that you
17 see fit to give to the testimony, to the credibility of the
18 witnesses, as well as to all issues of fact are matters for
19 your sole determination.

20 Now, it is my responsibility to charge you the law
21 applicable to the issues of fact presented in this case. It
22 is not a question of what you think the law is, or what you
23 think the law ought to be, or should be. It is not even a
24 question of what the lawyers tell you the law is, because
25 under the oath that you took as jurors, you are to take the

1 law as I give it to you and apply that law to the facts as
2 you determine them to be and then to write your verdict
3 accordingly.

4 It is also my duty to see that this trial is conducted
5 according to the rules of evidence that govern the admissi-
6 bility of testimony and evidence for your consideration, and
7 I will tell you that you are not to consider in any way any
8 testimony that has been ruled out by me as being inadmissible.

9 Now, Ladies and Gentlemen, the fact that a defendant
10 does not testify in his own behalf cannot and must not be
11 considered against him under any circumstances or in any
12 manner whatsoever. The fact that a defendant does not take
13 the witness stand in his own behalf does not create any
14 presumption against him, and I charge you that you must not
15 permit that fact to weigh in the slightest degree against the
16 defendant, nor should this fact enter into the discussions
17 or the deliberations of the jury in any manner.

18 Under the Constitution of South Carolina, and under the
19 Constitution of the United States, it is the prerogative of a
20 defendant to testify or remain silent, and the burden of
21 proof is always on the State of South Carolina to establish
22 his guilt by competent testimony beyond a reasonable doubt.

23 Ladies and Gentlemen, no statement, allegedly made by
24 a defendant, may be considered by you unless the State has
25 proven beyond a reasonable doubt that the defendant was

1 first given an explanation of his Miranda Rights before
2 making a statement, and that he fully understood the warnings
3 and knowingly and voluntarily elected to waive those rights.

4 You further must find beyond a reasonable doubt that
5 the statement was made, and that it was made freely and
6 voluntarily under the totality of the circumstances.

7 In other words, I charge you that an alleged statement
8 of a defendant, allegedly made to a law enforcement officer
9 or corrections officer, can not be considered against him
10 unless he was first advised of his right to remain silent,
11 advised that anything he said could be used in evidence
12 against him in a court of law, that he had a right to counsel
13 and that if he could not afford counsel that one would be
14 provided him without charge. And if he elected to talk, he
15 could stop at any time.

16 If you find that the defendant was so advised, you may
17 only consider his statement if you also find beyond a reason-
18 able doubt that he fully understood the warnings and,
19 nevertheless, intelligently and knowingly elected to waive
20 his rights.

21 I further charge you that a statement made to law
22 enforcement or corrections officers cannot be considered
23 against a defendant if it was made through force, fear, or
24 under duress or compulsion of any kind, or if it was induced
25 by any promise of leniency or reward of any kind.

1 Hence, it is your duty to determine from all of the
2 evidence before you whether the State has proven beyond a
3 reasonable doubt that the alleged statement was, in fact,
4 free and voluntary.

5 To summarize, in order for you to consider a state-
6 ment allegedly made by a defendant to a law enforcement
7 officer or corrections officer, you must first find beyond a
8 reasonable doubt (1) that the defendant was advised of his
9 Miranda rights; (2) that the defendant fully understood the
10 warnings and knowingly elected to waive his rights; (3) that
11 he did indeed make a statement; and (4) that the statement
12 was freely and voluntarily made under the totality of the
13 circumstances.

14 Now, Ladies and Gentlemen, one of the issues in this
15 case is the identification of the defendant as the perpetrator
16 of the crime. The State has the burden of proving identity
17 beyond a reasonable doubt. It is not essential that the
18 witness himself be free from doubt as to the correctness of
19 his statement, however, you, the jury, must be satisfied
20 beyond a reasonable doubt of the accuracy of the identifi-
21 cation of the defendant.

22 Identification testimony is an expression of belief or
23 impression by the witness. It's value depends on the oppor-
24 tunity the witness had to observe the offender at the time of
25 the offense and to make a reliable identification later.

1 In appraising the identification testimony of a witness
2 you may consider the following things, one, did the witness
3 have the capacity and an adequate opportunity to observe the
4 offender. Now, whether the witness had an adequate oppor-
5 tunity to observe the offender at the time of the offense
6 would be affected by such matters as how long or short a time
7 was available, how far or how close the witness was, and/or
8 how good the lighting conditions were, and these are just
9 examples, Ladies and Gentlemen.

10 Number two, was the identification made by the witness
11 subsequent to the offense the product of his own recollection.
12 You may take into account both the strength of the identifi-
13 cation and the circumstances under which the identification.
14 was made. If the identification of the defendant was
15 influenced by the circumstances under which the defendant was
16 presented to him for identification, you should scrutinize
17 the identification with care.

18 You may also consider the length of time that elapsed
19 between the occurrence of the crime and the next opportunity
20 to see the defendant as a factor bearing on reliability of
21 the identification.

22 Three, you may take into account any occasions in which
23 the witness failed to make an identification of the defendant
24 or made an identification that was inconsistent with his
25 identification at trial.

1 As I said earlier, the burden of proof is on the State
2 to prove every element of an offense charged and this
3 includes the identity of the defendant as the perpetrator of
4 the crime with which he stands charged.

5 If, after examining the testimony, you have a reason-
6 able doubt as to the identification of the defendant as the
7 perpetrator of the crime, you must find the defendant not
8 guilty.

9 Now, Ladies and Gentlemen, there are two indictments in
10 this case, the first indictment charges the defendant with
11 Assault and Battery with Intent to Kill, and in order to
12 explain that crime to you, the elements of that crime, I need
13 to tell you, first of all, what an assault is.

14 An assault is an attempt to offer, with force or
15 violence, to do bodily hurt or harm to the person of another,
16 where there is the ability to complete the attempt or offer
17 by a battery. In other words, it may be defined as an
18 attempt to do violence to the person of another in a rude,
19 angry, or resentful manner.

20 A battery is carrying into effect of an assault by
21 using or applying force, however slight, to the person of
22 another in a rude, angry, or resentful manner. For example,
23 Ladies and Gentlemen, if I was standing close enough to hit
24 you, and I swing at you, that is the assault. If I actually
25 were to hit you, the contact would be the battery, and that's

1 why you normally hear the words "assault and battery," the
2 assault is an attempt to hit and the battery is the actual
3 contact.

4 Now, there are three different kinds of assault and
5 battery, varying on degrees of seriousness. In this case you
6 will be concerned with two.

7 The first is Assault and Battery with Intent to Kill,
8 which is the offense alleged in the indictment. And the
9 second is a lesser included offense within the indictment
10 for Assault and Battery with Intent to Kill, and it is called
11 Assault and Battery of a High and Aggravated Nature. It is
12 sometimes referred to as Aggravated Assault.

13 Now, with respect to Assault and Battery with Intent to
14 Kill, I will tell you if this is an assault and battery in
15 which the person upon whom the battery was committed, had
16 died, the party making the assault would have been guilty of
17 Murder. Now, in order for you to fully understand what
18 Assault and Battery with Intent to Kill is, it is necessary
19 for me to tell you what constitutes Murder.

20 Murder is the killing of another person with malice
21 aforethought, either expressed or implied. There must be
22 malice or there can be no murder; and in an assault and
23 battery with intent to kill, the element of malice must also
24 be present.

25 Malice is a term of art, that is, a technical term,

1 importing wickedness and excluding just cause or excuse.
2 It is something that springs from depravity, from a heart
3 devoid of social duty and fatally bent on mischief. Malice
4 has been defined as the wrongful intent to injury another and
5 indicates a wicked or depraved spirit, intent on doing harm,
6 or doing wrong.

7 The words express or implied do not mean different
8 kinds of malice but merely express the manner in which the
9 only kind known to the law may be shown to exist. Malice is
10 express where there are antecedent threats of vengeance or
11 other circumstances show directly that the criminal purpose
12 was entertained. The law says if one intentionally inflicts
13 an injury upon another with a deadly weapon, the implication
14 of malice may arise. If facts are proved beyond a reasonable
15 doubt sufficient to raise an inference of malice to your
16 satisfaction, this inference would simply be an evidentiary
17 fact to be taken into consideration by you, the jury, along
18 with the other evidence in the case and you may give it such
19 weight as you determine it should receive.

20 Now, when I define murder as the unlawful killing with
21 malice aforethought, what do I mean by aforethought? It
22 means that while the law does not require that the malice
23 shall exist for any particular length of time before the
24 commission of the act in question, it must be aforethought.
25 There must be a combination of the previous evil intent and

1 the act producing the injurious result. The malice need not
2 be in the mind of the one doing the wrongful act any parti-
3 cular length of time before the act. If it is present in the
4 mind any length of time before the act, and at the time of
5 the act, accompanying and prompting the act, then, it's
6 presence would be sufficient.

7 As I told you, there is a lesser included offense
8 within this indictment for Assault and Battery with Intent to
9 Kill, and that is what we call Assault and Battery of a High
10 and Aggravated Nature.

11 And assault and battery of a high and aggravated nature
12 means that if the person upon whom the battery was committed
13 had died, then the person committing the battery would have
14 been guilty of manslaughter. So, I need to tell you what
15 manslaughter is.

16 Manslaughter is the unlawful killing of one person by
17 another without malice. It is the absence of malice that
18 distinguishes manslaughter from murder.

19 Now, there is also an indictment against this defendant
20 charging him with possession of contraband. Our law, Section
21 24-3-950, reads as follows: "It shall be unlawful for any
22 person to furnish or attempt to furnish any prisoner under
23 the jurisdiction of the Department of Corrections with any
24 matter declared by the Commissioner to be contraband. It
25 shall also be unlawful for any prisoner under the juris-

1 diction of the Department of Corrections to possess any
2 matter declared to be contraband." Matters considered to be
3 contraband within the meaning of this section shall be those
4 which are determined to be such by the Commissioner and
5 published by him in a conspicuous place, available to
6 visitors and inmates at each correctional institution.

7 Now, Ladies and Gentlemen, as I've told you, there are
8 several different possible forms of verdict in this case.
9 I've written them out for you, Madam Forelady. You will
10 have them to take back in your jury room with you. I've
11 written them out for your convenience so you don't need to
12 worry about trying to memorize them. I want to go over them
13 briefly, though. The order in which I give them to you has
14 no significance whatsoever, I have just got to give you
15 one first and then another and another one.

16 With regard to the charge, first of all, of Assault and
17 Battery with Intent to Kill, the possible forms of verdict
18 would be either (1) Not Guilty, or (2) Guilty of Assault and
19 Battery of a High and Aggravated Nature, or (3) Guilty of
20 Assault and Battery with Intent to Kill.

21 With respect to the charge of Possession of Contraband,
22 the two possible forms of verdict would be either Not Guilty
23 or Guilty.

24 Now, whatever your verdict is as to each indictment, it
25 must be unanimous, all twelve of you must agree. And when

1 you have arrived at a unanimous verdict, Madam Forelady, on
2 the back of this indictment you will see the word VERDICT is
3 printed. When you have arrived at a unanimous verdict,
4 underneath that, you would write what your verdict is, using
5 the form that I have given you. Write whatever your verdict
6 is and sign your name as Forelady on the lines provided. As
7 I say, there are two charges and so there will be one verdict
8 for each charge, a total of two verdict.

9 Now, again, as I say, whatever your verdict is, it must
10 be unanimous, all twelve of you must agree.

11 At this time I'm going to ask that you go back in your
12 jury room. I am required by law to stop and discuss my
13 charge with the attorneys. Do not begin discussing the case
14 yet, though, it may be necessary for me to call you back.
15 So, at this time, if you would, please step back in the jury
16 room.

17 (The jury retired from the courtroom.)

18 THE COURT: Any exceptions or additions on behalf of
19 the State?

20 MR. CHILDS: None, Your Honor.

21 THE COURT: The defense?

22 MR. RAY: None at this time, Your Honor.

23 THE COURT: Give the indictments and the forms to the
24 Bailiff and I'll ask the Bailiff to take the indictments back,
25 along with the evidence, bring the alternate out, and tell

1 the jury to begin their deliberations.

2 (The jury began their deliberations at 11:35 a.m.)

3 (The jury was sent to lunch at 12:35 p.m.)

4 (The jury indicated they had a question at 3:00 p.m.
5 and the panel was brought into the courtroom.)

6 THE COURT: I have a note from the jury that states:
7 "The jury would like transcripts of first day's testimony."
8 signed Mildred Overstreet, foreman.

9 Bring the jury in.

10 (The jury was brought into the courtroom.)

11 THE COURT: Madam Forelady, I have your request for a
12 transcript of the first day's testimony. We don't have that
13 typed up. We have tapes. Everything that is testified to
14 is taped and the way that we can make testimony available to
15 you is to bring you back in and play the tape of whatever
16 it is that you want to hear. The testimony from the first
17 day, the Court Reporter estimates about five hours, so I
18 don't have a transcript I can send back with you. If
19 bringing you back in and listening to the tapes will help you
20 or if you want to hear something specific, or specific
21 people's testimony that you need to hear, we'll be glad to
22 replay that for you, but there is no transcript that I could
23 send-back to you. But, like I say, if there is something
24 taped that you'd like to hear, we can bring you back in
25 and play anything you want to hear.

1 THE FOREMAN: Your Honor, I'm sorry, I didn't under-
2 stand, but I do know there has been a question about the
3 testimony of Officer Riley.

4 THE COURT: All right, if you will go back to your
5 jury room a few minutes, I'll have the Court Reporter find
6 Officer Riley's testimony and we will bring you back in and
7 replay it for you.

8 (The jury retired from the courtroom, and returned to
9 hear the testimony of Officer Riley, and retired at 3:30 p.m.)

10 (The jury returned at 3:50 p.m. with a question.)

11 THE COURT: Madam Forelady, it is my understanding
12 that you need for me to explain again the difference
13 between assault and battery with intent to kill and assault
14 and battery of a high and aggravated nature, is that correct?

15 THE FORELADY: Yes, sir.

16 THE COURT: You will recall that I defined for you what
17 assault was, which is an offer to do violence, and what a
18 battery was, which is the carrying into effect an assault by
19 use of applying force.

20 With respect to assault and battery with intent to
21 kill, I charge you that an assault and battery with intent to
22 kill is an assault and battery in which if the person upon
23 whom the battery was committed had died, then, the person
24 making the assault would have been guilty of murder. Now, in
25 order for you to fully understand assault and battery with

1 intent to kill, it is necessary for me to tell you what
2 constitutes murder.

3 Murder is the killing of another person with malice
4 aforethought, either express or implied. There must be
5 malice or there can be no murder, and in an assault and
6 battery with intent to kill, the element of malice must
7 be present.

8 Malice is a term of art that is a technical term,
9 importing wickedness and excluding just cause or excuse. It
10 is something that springs from depravity, from a heart devoid
11 of social duty and fatally bent on mischief. Malice has been
12 defined as the wrongful intent to injure another and indicates
13 a wicked or depraved spirit intent on doing wrong. The words
14 express or implied do not mean different kinds of malice but
15 merely the manner in which the only kind known to the law may
16 be shown to exist. Malice is express where there are
17 antecedent threats of vengeance or circumstances show directly
18 that the criminal purpose was entertained. The law says that
19 if one intentionally inflicts an injury upon another with a
20 deadly weapon, the implication of malice may arise. If facts
21 are proved beyond a reasonable doubt sufficient to raise an
22 inference of malice to your satisfaction, this inference
23 would be simply an evidentiary fact to be taken into consider-
24 ation by you, the jury, along with all the other evidence in
25 the case and you may give it such weight as you determine it

1 should receive.

2 When I refer to murder as being the unlawful killing
3 with malice aforethought, when I use the term "aforethought"
4 I mean that while the law does not require that malice shall
5 exist any particular length of time before the commission of
6 the act in question, it must be aforethought. It must be a
7 combination of the previous evil intent and the act which
8 produces the fatal result. The malice need not be in the
9 mind of the one doing the wrongful act any particular length
10 of time before the act. If it is present in the mind
11 any length of time before the act, at the time of the act,
12 accompanying and prompting the act, then its presence would
13 be sufficient.

14 Now, there is included in the charge of Assault and
15 Battery with Intent to Kill what is known as a lesser
16 included offense, which is Assault and Battery of High and
17 Aggravated Nature.

18 An Assault and Battery of a High and Aggravated Nature
19 means that if the person upon whom the battery is committed
20 had died, then, the person committing the battery would be
21 guilty of manslaughter. So, I need to tell you what man-
22 slaughter is.

23 . Manslaughter is the unlawful killing of one person by
24 another without malice. It is the absence of malice that
25 distinguishes manslaughter from murder. So, if you have an

1 unlawful killing of another human being with malice afore-
2 thought, it would be murder. If you have the killing of
3 another human being without malice, then, it would be man-
4 slaughter. So, the presence or absence of malice is what
5 distinguishes the two crimes.

6 Now, if you have any further questions, or need me to
7 go over that again, I'll be glad to.

8 . (The jury returned to the jury room and deliberated
9 further.)

10 THE COURT: All right, any exceptions or additions
11 from the State?

12 MR. CHILDS: No, sir, Your Honor.

13 THE COURT: The defense?

14 MR. RAY: None, Your Honor.

15 (The trial proceedings were in recess until the jury
16 returned with their verdict at 4:05 P.M. with a verdict.)

17 THE CLERK: Your Honor, this is Cases 87-GS-3859, The
18 State v. Paul Leslie Cox, indicted for Assault & Battery with
19 Intent to Kill. The verdict: Guilty of Assault and Battery
20 with Intent to kill.

21 87-3860, Paul Leslie Cox, indicted for Possession of
22 Contraband, the verdict is Guilty.

23 (The jury was dismissed from the case.)

24 THE COURT: All right, Mr. Childs.

25 MR. CHILDS: Your Honor, I pass forward the

1 indictments that I had prepared for impeaching purposes. He
2 has been convicted for Kidnapping, which he received a life
3 imprisonment sentence; Grand Larceny of Auto; four counts of
4 Forgery and one count of Breach of Trust with Fraudulent
5 Intent.

6 THE COURT: Hand up the indictments, please.

7 (Indictments were handed the Court.)

8 THE COURT: Is there anything you wish to say?

9 THE DEFENDANT: Yeah, I want you to sentence me to the
10 whole maximum sentence. As I've been railroaded this far,
11 don't stop now. I've been lied on, everything in this court-
12 room, don't stop now, go ahead and give me the whole thing,
13 run it consecutive with the life sentence.

14 If the man had to lie on me that bad to get me, then,
15 please give me the whole thing, I feel I deserve it.

16 THE COURT: Anything you want to say, Mr. Ray?

17 MR. RAY: Your Honor, obviously, the jury has been out
18 quite a while and there must have been some question about
19 Mr. Cox's guilt. I would ask the Court to take that into
20 account in imposing your sentence.

21 THE COURT: On the indictment for Assault and Battery
22 with Intent to Kill, Indictment 87-3859, the sentence is the
23 defendant be confined for a period of twenty years consecutive
24 to all other sentences now existing.

25 Indictment 3860, the sentence is he be confined ten

1 years consecutive to the sentence today given on 87-3859 and
2 to all over sentences existing.

3 The Court is in recess.

4 (END OF PROCEEDINGS.)
5
6
7
8
9
10

11 CERTIFICATE

12 I, V. LOUISE GRAY, being an Official Court Reporter
13 for the Thirteenth Judicial Circuit, State of South Carolina,
14 County of Greenville, do hereby certify that I took the
15 proceedings had in the matter of THE STATE v. PAUL LESLIE COX
16 which was held in Greenville, South Carolina on August 3-4,
17 1987 before the Honorable William B. Traxler, Jr., Resident
18 Judge.

19 I further certify that I am not of kin, counsel, nor
20 of interest to any parties to this proceeding.
21

22 October 30, 1987.

V. Louise Gray
Court Reporter
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of SPARTANBURG)PAUL LESTER COX #75206)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2007-GP-42-2757

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention MAX-127; P.O. Box 205; Ridgeville,
S.C. 29472-0205
2. Name and location of Court which imposed sentence SPARTANBURG
COUNTY COURTHOUSE
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) _____
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

2007 AUG - 7 AM 9:45
 MARC KITCHENS

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 13th Amendment Violation
- (b) PLEA NOT GUILTY, I WAS SENTENCED
- (c) GUILTY PLEA
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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 MARC KITCHENS

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. _____

 ii. _____

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. _____

 ii. _____

 iii. _____

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 MARC KITCHENS

19. State clearly the relief you seek in filing this application:

VACATED: SENTENCED PROPERLY

20. Are you now under sentence from any other court that you have not challenged?

STATE OF SOUTH CAROLINA)

VERIFICATION

County of _____)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Lusha Cre

SWORN to and subscribed before me this 28th day of June, 2007.

Arpua L Walker (L.S.)
Notary Public

My Commission Expires: 4/4/2011

FILED
CLERK OF COURT
SPARTANBURG COURT
2007 AUG - 7 AM 9:4
2016 MAR 10 AM 9:08
MARC KITCHENS M. HOPE BLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Lester G. [Signature]
Applicant

SWORN or affirmed to and subscribed before me this

28th day of June, 2007

[Signature]
Notary Public

My Commission Expires:

4/4/2011

2007 AUG - 7 AM 9:47
MARC KITCHENS

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Paul Leslie Cox, #75206,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2007-CP-42-2757

RETURN AND MOTION TO DISMISS

Respondent (the State), making its Return and Motion to Dismiss to the Application for Post-Conviction Relief (PCR) filed August 7, 2007, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the March 1987 term of the Spartanburg County Grand Jury for Kidnaping and Assault and Battery of a High and Aggravated Nature (1987-GS-42-643). He proceeded *prose*. On April 16, 1987, the Applicant pled guilty to Kidnaping. The Assault and Battery of a High and Aggravated Nature charge was *not pressed*. He was sentenced by The Honorable Luke N. Brown to confinement for his natural Life.

The Applicant subsequently filed an application for PCR on September 23, 1988. On May 10, 1989, the Honorable Jasper Cureton was informed that the Applicant refused to be transported. Judge Cureton issued an Order directing transport for the following day and stating that the Applicant's refusal to appear would be deemed a voluntary withdrawal. Deputy Mike McKie testified on May 11, 1989 that he had served the Applicant with the Order and that he, again, refused to be transported. Judge Cureton issued an Order dismissing the Application.

The Applicant subsequently filed a second application for PCR on December 4, 1991. Upon information and belief, this Application was denied.

The Applicant subsequently filed a third application for PCR on April 3, 1995. The Applicant was represented by Tom Dillard, Esquire. A hearing was held on September 12, 1995 where the Applicant withdrew his application. The Honorable J. Derham Cole issued an Order dismissing the Application on December 11, 1995.

The Applicant subsequently filed a fourth application for PCR on April 4, 1997. He was represented by Barbara Tiffin, Esquire. The Honorable John C. Hayes, III, denied the PCR by Order dated February 17, 1998. The Applicant filed a *pro se* 59(e) Motion which was denied by Judge Hayes by Order dated May 8, 1998. A timely notice of appeal was filed and a brief pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The Supreme Court denied certiorari by Order dated June 24, 1999 and the remittitur was issued on July 17, 1999.

The Applicant subsequently filed his fifth application for PCR on September 8, 2000. He was represented by Baiba Bourbeau, Esquire. The Applicant wrote a letter to Bourbeau dated February 11, 2002, strongly requesting that he be allowed to withdraw his PCR without a hearing. The Honorable Gary E. Clary granted his request and dismissed the PCR by Order dated May 13, 2002.

Incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions; the Applicant's records from the South Carolina Department of Corrections; the transcript of the proceedings against the Applicant; and the Applicant's prior PCR records.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. 10th Amendment Violations;
2. "Plea not guilty, was sentenced guilty plea."

III.

First, the State submits that the current Application for PCR must be summarily dismissed because it is successive to the Applicant's five (5) prior applications for PCR. The Uniform Post Conviction Procedure Act (the Act) provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (1985). Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The State submits that the Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for PCR; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, *supra*; Arnold v. State/Plath v. State, *supra*. Therefore, the State requests that this Court summarily dismiss the Application for PCR as successive.

IV.

Second, the State submits that the current application for PCR should be summarily dismissed for failure to comply with the filing procedures of the Act. S.C. Code Ann. § 17-27-10 to -160 (1976 & Supp. 2000). The Act reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

S.C. Code Ann. § 17-27-45(a) (Supp. 2000).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on April 16, 1987. This Application was filed on August 7, 2007, well after the statutory filing period had expired.

A motion for summary judgement may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the PCR Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, the State requests that this Court summarily dismiss the Application for PCR for failure to file within the time mandated by statute.

V.

Thus, the State requests that the Court summarily dismissed this Application for PCR both as successive and as barred by the statute of limitations.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the Applicant's current application for PCR be summarily denied and dismissed.

Respectfully Submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

S. PRENTISS COUNTS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

Columbia, South Carolina.
October 3, 2007.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 Paul Leslie Cox,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2007-CP-42-2757
7 The State,)
8 Respondent.) March 10, 2014
9) Spartanburg, South Carolina
10
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12
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14

11 B E F O R E:

12 HONORABLE J. MARK HAYES II, JUDGE
13
14

15 A P P E A R A N C E S:

16 WILLIAM S.F. FREEMAN, ESQUIRE
17 Attorney for the Applicant

18 JAMES CLAYTON MITCHELL III, ESQUIRE
19 SUZANNE H. WHITE, ESQUIRE
20 Attorneys for the Respondent
21
22
23

24 Margaret A. Woods
25 Circuit Court Reporter

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INDEX

WITNESSES

PAGE

PAUL LESLIE COX

Direct examination by Mr. Freeman

4

Certificate of reporter

25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
A-1	Applicant's third supplemental memorandum in support	24	
S-1	Packet	24	

1 THE COURT: Alright. Alright, we'll go on the record on
2 the matter of Cox vs. the State of South Carolina, this is
3 Case 2007-CP-42-2757, believe that we are here on the
4 petitioner's application, be more than happy to hear from you.

5 MR. FREEMAN: Thank Your Honor. My name is Will Freeman,
6 seated with me is Mr. Cox, we're here on his application. Uh,
7 I'd like to just briefly outline some of the facts a the case
8 then call Mr. Cox to the stand with the Court's permission.

9 Uh, we're here today on a kidnapping charge that
10 happened, the kidnapping itself occurred on January 13th 1987
11 and came before the Court Judge Brown on April 16th 1987 for a
12 sentence and at that hearing the Court sentenced, uh, Mr. Cox
13 to life in prison but said on kidnapping he'll come up for
14 parole in 10 years and the sentence was to be backdated to
15 June 16th 1983. The State I think, uh, not to, not to get
16 ahead of the thing, would contend that the, uh, sentencing for
17 assault and battery with intent to kill took away Mr. Cox's
18 right to parole eligibility, uh, but I'm not sure that that's
19 the case Your Honor, we'd ask Mr. Cox to come on forward and
20 give his testimony on those points.

21 THE COURT: Alright, sir, if you will just come right
22 over here (indicating).

23 (Whereupon, the applicant came forward.)

24 THE COURT: Alright, sir, if you will just stand right
25 there (indicating) and raise your right hand and let me swear

1 you in.

2 PAUL LESLIE COX, having been first
3 duly sworn, testified as follows:

4 THE COURT: Thank you, just have a seat in that chair.
5 Alright, sir, if you would that lady way on the other side of
6 the courtroom's a court reporter, I'm gonna need for you to
7 speak up loud enough so that she and I both can hear you,
8 okay?

9 THE APPLICANT: Yes, sir.

10 THE COURT: Thank you.

11 DIRECT EXAMINATION BY MR. FREEMAN:

12 Q. Mr. Cox, I'm gonna hand you a copy of this, uh, which you
13 had earlier and, Your Honor, I believe all the exhibits in our
14 memorandum are in evidence already, uh, with a possible
15 exception of the 1991 act, uh, that changed kidnapping from
16 life to 30 years and I'd go ahead and, uh, move all those into
17 evidence.

18 (Whereupon, a discussion was held off the record.)

19 MR. FREEMAN: We'd move those into evidence, Your Honor.

20 THE COURT: Without objection?

21 MR. MITCHELL: Without objection.

22 THE COURT: Thank you, sir.

23 MR. FREEMAN: And let me go ahead and get these
24 indictments moved into evidence that you just handed me a
25 minute ago. Let me put that in front of ya too, Mr. Cox.

1 THE COURT: Alright, the indictments are without
2 objection as well?

3 MR. MITCHELL: Without objection.

4 MR. FREEMAN: And that they've been handed up to you in
5 the, uh, uh, yellow envelope, Your Honor.

6 BY MR. FREEMAN:

7 Q. Let's start with the indictment, Mr. Cox, 'cause we were
8 just talking about that and it's fresh in our minds.

9 A. Yeah.

10 Q. You're looking at it right here ---

11 A. Carl ---

12 Q. --- and it's sign -- it says, "Witnesses Carl Mabry,
13 Woodruff Police Department."

14 A. He got fired in 1981. How'd you sign a warrant on me in
15 1987? If you'll check with the IRS man, he'll tell you that
16 that man got his last tax return at Woodruff Police Department
17 in 1981. I was on the street '81 when he got fired, aint no
18 way he got a warrant issued on me. He got, he got terminated,
19 Your Honor, and I don't know what -- if you'll, if you'll give
20 me a chance, they charge me with rapin' my friend but I've
21 never been tried for that, been tryin' to get Lisa Garrett to
22 try me now, she's refusin' to do it. If you'll give me a
23 chance, put me on s -- put me on speakerphone, I'll get you a
24 murder and a raper here today. If you don't help me then I'm
25 gonna die in there for, uh, uh, sumtin' I didn't do. Attorney

1 General will grant that just one phone call I'll never bother
2 you again. I'm tellin' you I don't lie. You call Warden
3 Ricky Harrison, I don't lie. That man signed that warrant, he
4 got terminated, I know he got ter -- I was on the street when
5 he got terminated, Tommy Jennings terminate that, I know his
6 son, we run around together and then on 1983 and '87 I got
7 sentenced for the kidnappin', they backdated that sentence to
8 June the 16th 1983.

9 Q. Let's kind, let's try to go in order a little bit if we
10 can for the Court to understand what our arguments are. The
11 first one is Mr. Woodruff was not an employee of the police
12 department.

13 A. Mr. Mabry.

14 Q. Oh, I'm sorry, Mr. Mabry is not employee of the Woodruff
15 Police Department.

16 A. No, ---

17 Q. The second one ---

18 A. --- he got terminated.

19 Q. --- the second one is that we have witnesses who would
20 say that you didn't do the crime but we have not been able to
21 communicate with them, is that right?

22 A. I got, I I can prove I I didn't do it. If you put me on
23 speaker phone and let me ask the question, I can prove it.
24 You will hear from those speakerphone I didn't do what I was
25 supposed to do, that chief of police Tommy Jennings murdered

1 my father August 1st 1960 and I let him get away all these
2 years; if it hadn't been for grandmother, I still let him get
3 away. I'll take a polygraph test. He murdered my father, I
4 seen it when it happened August 1st 1960 when five police car
5 they greet us by goin' to the front, 55 Chevy was settin' in
6 fronta the house. You'll you'll just trust one person in the
7 jail, I'll get 'em here today. Let me tell ya he mur and he
8 got terminated '86 robbin' Anthony's Drug Stores, he had got,
9 he as crooked as he come.

10 Q. Okay. The third thing you wanna tell the Court is well
11 the the transcript says your sentence should be backdated to
12 June 16th 1983.

13 A. It wasn't backdated.

14 Q. Let me read from the the the Court's transcript. Court:
15 "How much time, how long you been in jail now on that first
16 sentence," and you say, "Since June 16th 1983." And the
17 lis -- solicitor says, "Your Honor, the State would recommend
18 this sentence be backdated to that date."

19 A. Yeah, that's ---

20 Q. I was reading from Page, uh, 3.

21 A. --- that's on the kidnapping charge ---

22 Q. Okay.

23 A. --- where it was backdated.

24 Q. The third thing you're asking the Court to do today is
25 backdate the kidnapping charge?

1 A. No, I'm asking for this to be overturned.

2 Q. Okay, overturned because . . .

3 A. 'Cause people are violated ---

4 Q. Okay.

5 A. --- and if you backdated it to June 16th 1983 I went up
6 for parole ten years, they took my parole date on the Omnibus
7 Crime didn't come out in January '87 sumtin' like that,
8 they -- that right there said backdate June the 16th '83, the
9 crime of kidnapping didn't happen 'til 1987, you can't
10 backdate no sentence four years before the crime took place,
11 that was the warrant where I got tried right there 4/16 a '87
12 for the kidnapping and assault and battery, ---

13 Q. That's ---

14 A. --- ain't no way that sentence supposed to stand.

15 Q. So we we got two problems; one, they didn't do what they
16 said they were gonna do ---

17 A. Yeah, they didn't backdate that sentence. When you
18 didn't back that sentence I'm 20 years past my parole date.
19 I've been in here since 1983, '87 I went on escape, got me
20 for the kidnapping and all, tried me 4/16 a '87 right there,
21 backdated until I started my first sentence of forgery, they
22 didn't backdate it. I don't want it backdated, it's got to be
23 overturned, a plea bargain violation under *Santobello vs. New*
24 *York*, it's gotta be overturned, granted a new trial.

25 Q. Okay. And if if they did backdate it, which I know we

1 don't want that, we want it overturned, it would be before the
2 Omnibus Act came into place, right?

3 A. Omnibus Crime -- I got tried 4/16 a '87, I escaped
4 January 13th '87, Omnibus Crime Bill come in January 1st of
5 '87, that comment right there with that warrant 4/16/87
6 kidnapping, I was tried given life in prison by Judge Luke N.
7 Brown. You cannot put up a sentence and backdate it four
8 years before the cri -- crime took place, aint no way and in
9 fact it wasn't backdated, it's got to be overturned, granted a
10 new trial. I'm ask -- I'm I'm a -- if you'll . . .

11 Q. Alright. Now the transcript you're lookin' over earlier,
12 you saw some errors in it, is that right?

13 A. Somebody done -- I'm telling you that aint my transcript.

14 Q. Okay.

15 A. That's Greenville transcript right that you give me.

16 Q. There's ---

17 A. It said, ---

18 Q. --- all ---

19 A. --- it said that you railroad this goddamn far don't stop
20 now, give me the whole goddamn thing when I got railroaded in
21 Greenville. They charge me with possession of contraband on
22 243950 say I stabbed a corrections officer think with a knife.
23 They removed that knife right there, police assigned to the
24 hospital in Greenville. I don't know how the hell they got me
25 guilty, aint no way. Jury went out said we can't reach a

1 verdict but Will B. Traxler, Jr. let 'em come in, this is my
2 trial and the trial takes 'em convict me twenty minutes
3 later ---

4 THE COURT: Mr. Cox, if you would I'm gonna need you to
5 speak up, I'm havin' problems hearing you, okay, and s -- and
6 if you would slow down with your speaking as well okay.

7 THE APPLICANT: Alright. I'm just saying' that with Carl
8 Mabry if you'll take five seconds and check with IRS he'll
9 tell you what year Carl Mabry got his last paycheck as
10 Woodruff police officer. I was on the street when he got
11 terminated, there aint no way he could sign a warrant on me
12 1987, no way. These records, I don't know. I don't need to
13 take the blindfold off Lady Justice 'cause she's legally blind
14 now. You won't, you won't even wanna put a murderer that
15 rapin' my friend go to jail, I've never been tried for that.
16 Lisa Garrett I ---

17 (Indiscernible cross-talk.)

18 MR. MITCHELL: Objection, Your Honor, it's not
19 responsive.

20 THE COURT: I'll sustain the objection.

21 MR. MITCHELL: Okay.

22 BY MR. FREEMAN:

23 Q. Mr. Cox, let's, um, I think we kinda covered those
24 grounds pretty well.

25 A. What what what -- not responsive in what kinda way?

1 Q. Well I understand you're -- we're here about the
2 kidnapping, I think the Court understands what you're saying
3 is they did not honor the plea agreement, is that right,
4 'cause they didn't backdate your sentence, Mr. Cox?

5 A. Go ahead and just finish railroadin' me, let's get the
6 hell outta here. I'll take the blindfold off Lady Justice,
7 not responsive in what kinda way? I ---

8 THE COURT: Sir, if you would answer your lawyer's
9 questions, alright, and speak up and and if you would, sir,
10 please do not use profanity when you're in this courtroom,
11 alright? Go ahead.

12 BY MR. FREEMAN:

13 Q. Mr. Cox, ---

14 A. If you don't understand what I'm sayin' is I got tried
15 for that kidnapping '87, crime was committed in '87 ---

16 Q. Yes.

17 A. --- they backdate that sentence to June the 16th '83 and
18 relief -- they didn't backdate the sentence and that violated
19 the plea bargain that I entered, that's on that plea bargain,
20 never mind, it's right there in black and white. This
21 sentence cannot stand kidnappin', it's gotta be overturned.

22 Q. Okay. Your Honor, that would be, uh, one of our main
23 arguments. Let's look at your application, Mr. Cox, that you
24 filed with the court, I'm gonna help you turn ---

25 A. I'm alright, just leave it right there.

1 Q. Okay.

2 A. That's the only thing I need. That warrant, that police
3 got terminated in '81, ain't no way he coulda signed that, had
4 a warrant signed on me in '83, I mean, '87 and that kidnappin'
5 charge right there cannot leave that sentence in place, it's
6 got to be overturned. That prosecutor right there Solicitor
7 Bowden saved the warrant the State would not correct any
8 sentence backdated to and backdated on 8 -- June the 16th a
9 '83, crime took place in '87. You cannot let a sentence stand
10 and backdate it four years before the sen -- before the crime
11 took place and that's under *Santobello vs. New York*, plea
12 bargain violation that got to be overturned.

13 Q. Tell us that that case you're sayin' vs. ---

14 A. *Santobello vs. New York*.

15 Q. Will you spell it for the court reporter if you can.

16 A. S-A-N-T-O-L-L -- I I don't this time -- B-E-L-A, I don't
17 know how you spell Santobello.

18 Q. Okay.

19 A. S-A-N-B ---

20 Q. Santobello.

21 A. S-A-N-B-E-L-O, that's a plea bargain, that's a plea
22 bargain right there is any way you wanna look at it. Ain't no
23 way you can let that sentence stand, that kidnapping stand, no
24 way and Omnibus Crime Bill it's unconstitutional right there.
25 You cannot take person's parole date, you cannot take and

1 overturn 20-year life sentence or a 10-year life sentence
2 then resentence like it never exist and everybody knows that.
3 They took my sentence and altered my sentence, took my parole
4 date and made life without parole, kidnapping don't carry life
5 without parole. Omnibus Crime Bill is unconstitutional right
6 there.

7 Q. And, Your Honor, we we discussed the unconstitutionality,
8 uh, uh, that that issue, uh, in the the documents that we
9 filed with the Court as well. Uh, one of the other points you
10 raised in your application, Mr. Cox, was that the guilty, uh,
11 the guilty plea was unlawful and I think, uh, well you weren't
12 represented at the guilty plea, is that right?

13 A. I didn't I represent myself and if you'll listen you
14 understand and when I entered that guilty plea me and -- I got
15 arguin' in the courtroom, got to cussin' in the courtroom.
16 Judge Luke N. Brown sentenced me, called me back before him
17 said, I forgot to ask you how you plead. I said, I did not
18 commit the crime you had me accused of, he give me another
19 life sentence. I asked for the disposition paper, it's on the
20 disposition paper kidnappin' slash kidnappin' life without, I
21 got it and I lost it, crooked court sent it to me. If you'll
22 get a copy a that, you'll see I got sentenced two times for
23 the same crime.

24 Q. Okay. Uh, ---

25 A. You gonna deny that?

1 Q. Well you did -- we've got a, and and once you -- I I
2 think this is more for me and you to discuss and you can talk
3 to the AG when it's, uh, his time, the current sentence right
4 here on the first page says life, isn't that right?

5 A. It says life.

6 Q. Okay, that's what you're in for right now.

7 A. Yeah, life without parole.

8 Q. Uh, uh, ---

9 A. They took my parole date in 1996.

10 Q. At the hearing the kidnappin' transcript, you see the
11 Court told ya it was a 10-year, uh, if you'll look at the
12 second page, I'm gonna draw your attention to it, in the
13 transcript which I know we have, uh, contain some errors but
14 the transcript from 1987, uh, Court says, "Kidnapping, comma,
15 come up for parole on 10 years of kidnapping," you see where I
16 read that?

17 A. Yeah, ---

18 Q. You were there in the courtroom judge told you you'd come
19 up for parole in 10 years?

20 A. Y -- for the kidnappin', yeah. Penalty for kidnappin'
21 reduced by 30-year.

22 Q. How's that?

23 A. I didn't -- want you to understand I've not been up for
24 parole.

25 Q. Yeah, you have not been up for parole ever, have you?

1 A. No.

2 Q. Not 10 years, not 20 years, ---

3 A. No, ---

4 Q. --- never.

5 A. --- never.

6 Q. In fact, the State told you you weren't ever gonna be up
7 for parole, isn't that right?

8 A. That's why -- what I'm tryin' to do now tell you that the
9 indictment there's somethin' wrong.

10 Q. Okay.

11 A. Only thing I want here here today is let's just end it
12 right here and do it just like this: there's a plea bargain
13 violation. My sentence supposed to be backdated to June the
14 16th 1983 so the Omnibus Crime Bill would put me where where
15 I, where I'd have no parole date. They they did not backdate
16 that sentence to June the 16th 199 -- 1983, that violated the
17 plea bargain agreement we agreed to and this sentence got to
18 be overturned and new trial granted 'cause a that. Then Carl
19 Mabry signed new warrants on me, he got terminated 1981, ain't
20 no way coulda signed the warrants on me in 1983, I woulda
21 never had known if Ratigan hadn't sent me a copy a that, uh,
22 last year out out of Greenville, I woulda never known Carl
23 Mabry's name was on the warrant.

24 Q. Okay. Uh, the, uh, wanna make two more points, Mr. Cox,
25 and and I think these are the points that you and I have

1 discussed before. Uh, right now, you you said this a minute
2 ago, kidnapping is not a life sentence anymore, it's a 30-year
3 sentence, isn't it?

4 A. It's never been a life sentence ---

5 (Indiscernible cross-talk.)

6 Q. And, Your Honor, we we've attached to our brief the
7 actual bill that changed kidnappin' to a 30-year sentence and
8 there is, uh, uh, there's no prohibition against that bein'
9 retroactive so if if that were, uh, enacted today he would
10 have gotten out June 16th 19, uh, 2013, even using the most
11 draconian definition of kidnapping today, uh, that still gets
12 him out. The, uh, out -- I'm sorry, that still gets him
13 completing the kidnapping charge, Your Honor. Uh, Mr. Cox,
14 one other thing you said, uh, at your guilty plea, uh, you
15 pled guilty to kidnapping your grandmother or that's what the
16 State's charged you with ---

17 A. I got 10-years to life and I entered a not guilty plea on
18 that. Judge Luke N. Brown sentenced me, called me back before
19 him 'cause I was raisin' hell and I I aint got no no other way
20 to put it, and and I told him I didn't commit the crime, he
21 had me accused somebody had done sumtin' they aint supposed to
22 do, changed the transcript.

23 Q. Okay.

24 A. I know what I said in that courtroom, I I got a right to
25 listen to that tape and if you listen to that tape, Your

1 Honor, you will see what's said on that tape. I'm asking ---

2 Q. And ---

3 A. --- for that tape to be admitted into evidence 'cause
4 it's been tampered with.

5 Q. Uh, yeah, Your Honor, that, uh, we'd move that the
6 transcript be conformed to the actual, uh, tape to the extent
7 it differs and move it into evidence to the extent to be
8 located by the Attorney General. Uh, I don't think -- ya'll
9 have it with ya by any chance?

10 MR. MITCHELL: No, we would oppose that, I mean, this was
11 a guilty plea 1987, I don't think there's any record of that
12 tape anymore and the transcript I think speaks for itself.
13 It's -- we we would assert the doctrine of laches 'cause
14 there's probly not any tape in existence at this point 27
15 years ago?

16 THE APPLICANT: You gonna let a sentence stand on my, uh,
17 plea bargain violation?

18 MR. FREEMAN: Mr. Cox, I think, I think those -- gonna
19 let the Court rule on its own due time. Uh, the Court isn't
20 in the habit of answering questions normally from from the
21 witness stand, uh, I apologize for that.

22 THE COURT: It's, alright.

23 MR. FREEMAN: Now ---

24 THE COURT: As as to the, uh, objection I will sustain
25 the objection because I don't have any evidence in front of me

1 other than the assertion by the witness that the transcript is
2 is is different, alright.

3 BY MR. FREEMAN:

4 Q Mr. Cox, I think we've discussed the points that you had
5 wanted to raise with him, is there anything else that you'd
6 like to add?

7 A. No, sir, I'm finished.

8 MR. FREEMAN: Okay. Alright, Your Honor, we also rely on
9 our arguments that were made in our various briefs that we
10 filed with the Court. Uh, I'd ask -- I I think Mr. Cox at
11 this date ---

12 (Whereupon, the Applicant left the witness stand.)

13 THE APPLICANT: Let's go.

14 (Whereupon, a discussion was held off the record.)

15 POLICE OFFICER: One minute, Cox.

16 (Whereupon, a discussion was held off the record.)

17 MR. FREEMAN: Could I have one minute, Your Honor?

18 THE COURT: You may.

19 (Attorney/client discussion held off the record.)

20 THE COURT: Tell you what I'll step down, I'll I'll come
21 back just a moment.

22 (Whereupon, a recess was taken.)

23 THE COURT: May be seated.

24 MR. FREEMAN: Uh, Judge, I appreciate the Court's
25 patience, we took a slight break. In addition to the

1 arguments Mr. Cox annunciated, I would, uh, I think we've just
2 moved into evidence by agreement our third supplemental
3 memorandum, we rely on those arguments of law that are set
4 forth therein. Uh, Mr. Cox has, uh, uh, doesn't wish to
5 testify anymore and has left, uh, courtroom, uh, and
6 instructed me to withdraw as his counsel so after I make these
7 motions I would, uh, uh, also ask that the Court consider the
8 matter consider relieving me as counsel and I'll be glad
9 before I'm relieved as counsel, I'll be glad to address any
10 arguments we've raised.

11 MR. MITCHELL: Well, Your Honor, we we'd like you to
12 treat this as a voluntary dismissal of the case since Mr. Cox
13 is not here, we'd also like to state for the record that this
14 is Mr. Cox's sixth PCR filing. He's filed his first one he
15 filed in September of 1988, second one in December of 1991,
16 third one April of 1995, fourth one April of 1997, fifth one
17 September 2000, we're here today before the applicant's sixth
18 application which was filed August 2007. Uh, I'd also like to
19 note for the Court that Mr. Cox has filed eight PCR
20 applications in 2013 and six of 'em are currently open in the
21 Seventh Circuit, uh, and we would just as far as our argument
22 goes, we would state this is obviously successive and filed
23 well outside the statute of limitations so we would rely on
24 that.

25 Your Honor, we'd also like to, uh, we'd also argue that

1 Mr. Cox is not eligible for parole because he's defined as a
2 subsequent violent offender and under SC Code 24-21-640 the
3 statute states that the board must not grant parole nor is
4 parole authorized to any prisoner serving a sentence for a
5 second or subsequent conviction following a separate
6 sentencing for a prior conviction for violent crimes as
7 defined in Section 16-1-60 and I think as we just heard that
8 Mr. Cox was convicted of assault and battery with intent to
9 kill in August of 1987 and that would be defined under Section
10 16-1-60 as a violent crime and kidnapping's also a violent
11 crime so this would be two violent crimes and that's why
12 Mr. Cox is not eligible for parole, it's does -- it doesn't
13 have anything to do with the change in the statute as he
14 asserts and we'd also argue that even though the statute has
15 changed or the kidnapping statute has changed with a maximum
16 so all he can receive now is 30 years that the time, the law
17 at the time when -- the law that was in effect at the time
18 Mr. Cox was sentenced was the maximum date, the maximum
19 sentence he received was life and there's a case *State v.*
20 *Varner*, it's it's really right on point with this. Uh, the
21 defendant there was convicted of kidnapping and that's when
22 kidnapping was a had a mandatory life sentence so during his
23 direct appeal while it was pending the legislature changed
24 the, legislature changed the maximum sentence to 30 years so
25 he, so Mr. Varner in this case challenged that and that's in

1 1991 and the Supreme Court held that the law in effect, the
2 sentencing law at the time of sentencing is the law that
3 controls so the maximum date, the maximum sentence he could
4 receive then was life and that's the sentence that he has to
5 live with.

6 Oh, one more thing, Your Honor, um, as to Mr. Cox's
7 argument about backdating the sentence, we would just, our
8 position is that it wouldn't -- he's not prejudiced by that
9 because he's serving a life sentence with a 20-year
10 consecutive sentence on top a that so even if you do backdate
11 it he'll never even begin serving his, the second sentence,
12 the Greenville sentence, under assault and battery with intent
13 to kill because that was 20 years consecutive on top of the
14 life sentence that he received from the kidnapping charge here
15 in Spartanburg.

16 MR. FREEMAN: A -- thank Your Honor, uh, ---

17 THE COURT: The State have a position concerning, uh,
18 counsel's statement that he be relieved?

19 MR. MITCHELL: Uh, that's, I think we would consent to
20 counsel being relieved as Mr. Cox is obviously uncooperative.

21 (Whereupon, a discussion was held off the record.)

22 MR. MITCHELL: Yeah, now if he do -- if Mr. Cox does
23 request to file a notice of appeal that, uh, counsel will be
24 responsible for informing him a those rights.

25 THE COURT: Alright. Okay.

1 MR. MITCHELL: Thank Your Honor.

2 THE COURT: Um, the Court believes that the proper
3 approach would be to, uh, consider this a termination or a
4 withdrawal of the application since the witness stopped
5 testifying, did not remain in the courtroom. He had, the the
6 Court did observe and obvious his demeanor after a ruling I
7 made is that he seemed to just freeze up and did not, uh, gave
8 me the impression he did not like the rulings that I made,
9 left the witness stand and began to exit the courtroom until
10 security was able to stop him, um, that's when the Court left
11 the bench, so given the conduct of the witness it became and
12 the Court would conclude that he did not have an intent to
13 want to have this court proceed with conducting any type of
14 hearing so I would consider the application to be withdrawn,
15 uh, everybody's protected on the record on those other issues
16 but since he does, since he has left the courtroom and and
17 gave the Court the impression that he didn't want me to
18 proceed, Court will not be ruling on any of the other
19 arguments that were presented. I would grant counsel's motion
20 to be relieved as counsel. If counsel would prepare an order
21 indicating the State's consent to it, I'll sign it and then if
22 you would have a copy of that withdraw order relieving counsel
23 of as being Mr. Cox's attorney, just have that served on him
24 so if he wants to contest it, okay. Thank ya'll very much.

25 MR. FREEMAN: Is the State gonna prepare an order or is

1 it just a Form 4?

2 THE COURT: I think we probly need some ---

3 MS. WHITE: Yeah, ---

4 THE COURT: --- little order.

5 MS. WHITE: --- we can ---

6 MR. MITCHELL: We can ---

7 (Indiscernible cross-talk.)

8 THE COURT: Yeah.

9 MS. WHITE: Yeah.

10 MR. MITCHELL: Okay.

11 THE COURT: And be sure the court reporter has all the
12 exhibits that were admitted in the event that we need the the
13 record at a later time. Alright, we'll go off the record.

14 MR. FREEMAN: Thank Your Honor.

15 MS. WHITE: Thank you, Your Honor.

16 (Applicant's third supplemental memorandum in support
17 marked Applicant's Exhibit No. 1 and admitted into evidence
18 and packet marked State's Exhibit No. 1 for identification.)
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25

1 CERTIFICATE OF REPORTER
2

3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on March 10, 2014 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 4 through 24, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 August 24, 2014
14

15 Margaret A. Woods

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
18
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25

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Paul Leslie Cox, #75206,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2007-CP-42-2757

ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post conviction relief filed August 7, 2007. The Respondent made its Return on or about October 3, 2007. An evidentiary hearing was convened into the matter on January 18, 2008, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by William S.F. Freeman, Esquire. This Court signed a Final Order of Dismissal on May 23, 2008 finding that the application was successive to the Applicant's five (5) previous applications and was filed outside the statute of limitations. Applicant then filed a Motion to Reconsider on June 18, 2008. This Court granted that motion which reopened the record to allow for discovery into the mandatory life sentence imposed on Applicant and into the issue of Applicant's parole eligibility. The State then filed a Rule 59(e) motion on October 14, 2008, asking the court to reconsider its decision to grant discovery. This Court granted the State's Rule 59(e) motion by Order dated February 20, 2014, rescinding the grant of discovery.

A hearing was convened on March 10, 2014 at the Spartanburg County Courthouse to give the Applicant an opportunity to present evidence to support his allegations. Applicant was present and represented by William S.F. Freeman. The State was represented by J. Clayton Mitchell, Esquire. The Applicant became upset while being examined by his attorney and chose not to

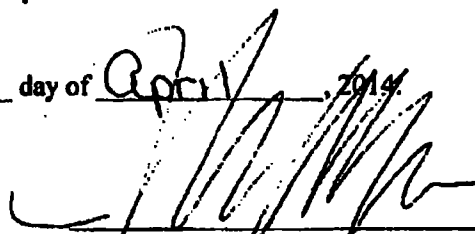
continue the hearing. The Court noted on the record that Applicant became uncooperative and attempted to leave the courtroom. Applicant unequivocally stated that he wished to terminate counsel and withdraw this application. Due to Applicant's actions at the hearing, the Respondent moved pursuant to Rule 41(b), SCRPC, to dismiss this matter due to the Applicant's failure to prosecute and his multiple requests to withdrawal his application.

The plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's neglect in proceeding with his cause. Don Shevey & Spires, Inc. v. American Motors Realty Corp., 279 S.C. 58, 301 S.E.2d 757 (1983). This Court finds the Respondent's motion well taken and hereby dismisses this matter with prejudice.

IT IS THEREFORE ORDERED:

1. The above captioned application is dismissed with prejudice for Applicant's failure to prosecute.

AND IT IS SO ORDERED this 28 day of April, 2014


J. Mark Hayes II
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

2014 APR 29 PM 3:01

The State of South Carolina**INDICTMENT FOR**County of SpartanburgKidnapping _____ AND
Assault and Battery High & Aggravated

At a Court of General Sessions, convened on the _____ day of MAR 2 1987,
19____, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE
KidnappingThat Paul Leslie Cox

did in Spartanburg County on or about the 13th day of January,
1987, wilfully with criminal intent, seize, kidnap, confine one
Lottie Lane without authority of Law, in violation of Section 16-14-910,
Code of Laws of S. C., 1976.

COUNT TWO

Assault and Battery High & Aggravated

That Paul Leslie Cox

did in Spartanburg County on or about the 13th day of January,
1987, commit an assault and battery upon one Lottie Lane, constituting
an unlawful act of violent to the person of the said Lottie Lane,
accompanied by circumstances of aggravation, to-wit: by forcing her
into a bed room at her residence and bounding and gagging the elderly
woman.

Against the peace and dignity of the State, and contrary to the statute in such cases made and
provided.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
1987 FEB 18 PM 4:56

John B. Boudin
Solicitor

B 710141
B 710140

Witnesses

Carl Mabry
Woodruff Police Dept.

1. SENTENCE MADE ☒
2. REPORT MADE ☒
3. CARD FILED ☒
4. INDEXED ☒
5. CHECKED NOTICES ☒
6. CHECKED RETURNED ☒
7. ASSESS. MADE ☒
FINE ☒
8. TRAFFIC VIOLATIONS COPY ☒

Verdict

Foreman

87-GS-42 - JB 643

The State of South Carolina

County of Spartanburg

COURT OF GENERAL SESSIONS

MAR 2 1987 Term, 19

THE STATE

VS.

Paul Leslie Cox

Not a prior or to Aggravated Assault
16 April 87 John B. Bouch

INDICTMENT FOR

Kidnapping and

Assault and Battery
High and Aggravated Nature

Holman C. Gossett, Jr.

Pat Brumgardner

Foreman of Grand Jury

McCAW PRINTERS

COLUMBIA, S. C. 29205

John B. Bouch

SENTENCE

The defendant Paul Leslie Cox is
committed to the State Dept. of Corrections/County for a term of 12
months/years and/or to pay a fine of \$ 1000.00
service of 12 months/years and/or payment of
\$ 1000.00, plus pay/waive costs and assessments as applicable*, the
balance suspended with probation for 12 months/years.
Restitution For physical injury \$ 0.00
Yes / No property damage \$ 0.00
to be paid.

to clerk for 12 **
Other conditions None

Date 4-16-87 Presiding Judge Robert M. B.

*Costs and Assessments
Non-waivable \$ 0.00
Not waived \$ 0.00
Total \$ 0.00

K.R. H. H. H.
Marta Smith, DC Clerk of Court
**Pay to Victim's Compensation Fund if subrogated.

I PAUL LESLIE COX
hereby appear in my own proper person and plead
guilty to KIDNAPPING
On the within indictment.

Witness: Paul Leslie Cox
K.R. H. H. H.
Clerk of Court Marta Smith, DC